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IN THE UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF PENNSYLVANIA

DARRELL G. OBER

Plaintiff

PAUL EVANKO, MARK
CAMPBELL, THOMAS COURY
JOSEPH WESTCOTT,
HAWTHORNE CONLEY,
JOANNA REYNOLDS AND
SYNDI GUIDO,

Defendants

NO 1:CV-01-0084

CIVIL ACTION LAW

(JUDGE CALDWELL)

JURY TRIAL DEMANDED

FILED
HARRISBURG, PA

MAY 20 2002

MARIE MARSHALL, CLERK
Deputy Clerk

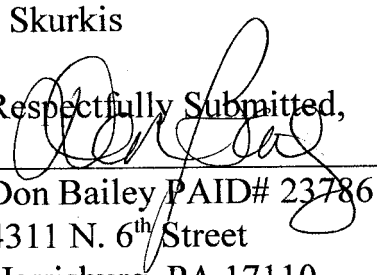
PLAINTIFF'S ADDENDUM TO EXHIBITS IN SUPPORT OF MOTION
FOR SUMMARY JUDGMENT- DEPOSITION TESTIMONY

Volume I

- 1.) Deposition of Paul Evanko
- 2.) Deposition of Ralph Kush
- 3.) Deposition of Michael Soohy
- 4.) Deposition of Darrell G. Ober (Day 1)
- 5.) Deposition of Darrell G. Ober (Day 2)
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- 9.) Deposition of Marie Marshall

- 10.) Deposition of Thomas Williams
- 11.) Deposition of Mark Campbell
- 12.) Deposition of Larry Riley
- 13.) Deposition of Francis Koselnak
- 14.) Deposition of Walter Margeson
- 15.) Deposition of Mark Grab
- 16.) Deposition of Mary Bungo
- 17.) Deposition of William McAlreavy
- 18.) Deposition of John Pudliner
- 19.) Deposition of John (Rick) Brown
- 20.) Deposition of Mark Carr
- 21.) Deposition of Robert Werts
- 22.) Deposition of Robert Hickes
- 23.) Deposition of Hawthorne Conley
- 24.) Deposition of R. Dane Merryman
- 25.) Deposition of Charles Skurkis

Respectfully Submitted,


Don Bailey PAID# 23786
4311 N. 6th Street
Harrisburg, PA 17110
(717) 221-9500

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT
OF PENNSYLVANIA

* * * * *

DARRELL G. OBER, *

Plaintiff *

vs. *

PAUL EVANKO, MARK *

CAMPBELL, THOMAS *

COURY, JOSEPH *

WESCOTT, and *

HAWTHORNE CONLEY, *

Defendants *

* * * * *

VIDEOTAPED DEPOSITION OF

PAUL EVANKO

March 27, 2002

COPY

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VIDEOTAPED DEPOSITION

OF

PAUL EVANKO, taken on behalf of the
Plaintiff herein, pursuant to the
Rules of Civil Procedure, taken
before me, the undersigned, Jennifer
Billstein, a Court Reporter and
Commissioner of Deeds in and for the
Commonwealth of Pennsylvania, at the
Technology Center, Bureau of Tech
Services, 2629 Market Place,
Harrisburg, Pennsylvania, on
Wednesday, March 27, 2002 beginning
at 9:10 a.m.

A P P E A R A N C E S

DON A. BAILEY, ESQUIRE

4311 North 6th Street

Harrisburg, PA 17110

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Chief Counsel

PA State Police

1800 Elmerton Avenue

Harrisburg, PA 17110

COUNSEL FOR DEFENDANTS

A P P E A R A N C E S (C O N T'D)

JOANNA REYNOLDS, ESQUIRE

Assistant Counsel

PA State Police

1800 Elmerton Avenue

Harrisburg, PA 17110

COUNSEL FOR DEFENDANTS

ALSO PRESENT: ANDREW J. OSTROWSKI,

ESQUIRE

VIDEOGRAPHER FROM PR

REPORTING

MICHAEL SOLOMON,

VIDEOGRAPHER FROM

SARGENT'S COURT

REPORTING SERVICE, INC.

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P R O C E E D I N G S

VIDEOGRAPHER:

Mr. Evanko, would you
please raise your right hand
and state your name for the
record?

MR. EVANKO:

Paul Evanko.

PAUL EVANKO, CALLED AND SWORN TO
TESTIFY

VIDEOGRAPHER:

Thank you. Mr. Bailey,
could we have a sound check
around the room?

ATTORNEY BAILEY:

Yes. My name is Don
Bailey. I represent Darrell
G. Ober, who is the Plaintiff
in this matter. My address is
4311 North Second --- North
Sixth Street, Harrisburg,
Pennsylvania 17110. My phone
number is (717) 221-9500.

ATTORNEY GUIDO:

1 Syndi Guido, Governor's
2 Office of General Counsel. I
3 represent Colonel Evanko and
4 the other Defendants.

5 ATTORNEY CHRISTIE:

6 Barbara Christie, Chief
7 Counsel, Pennsylvania State
8 Police. My address is 1800
9 Elmerton Avenue, Harrisburg,
10 PA 17110. Office number is
11 (717) 783-5568.

12 ATTORNEY REYNOLDS:

13 My name is Joanna
14 Reynolds. I'm an Assistant
15 Counsel with the state police.
16 I represent the Defendants.
17 And my address and phone
18 number are the same as Ms.
19 Christie's.

20 ATTORNEY BAILEY:

21 I know we have a
22 stenographer here. If she
23 could identify herself and
24 then put a phone number down.
25 I want to specify that I am

1 not ordering a stenographic
2 copy; okay? But if that would
3 change, I'd need to be able to
4 get in touch with you.

5 COURT REPORTER:

6 Sure.

7 ATTORNEY BAILEY:

8 Could you identify
9 yourself for the record?

10 COURT REPORTER:

11 Jennifer Billstein from
12 Sargent's Court Reporting.
13 Their number is (215) 564-
14 9727.

15 ATTORNEY BAILEY:

16 Thank you, Jennifer,
17 very much. The witness has
18 been sworn?

19 VIDEOGRAPHER:

20 Yes, sir.

21 EXAMINATION

22 BY ATTORNEY BAILEY:

23 Q. Colonel, you have been through
24 a number of --- or at least sat
25 through a number of depositions in

1 this case; is that correct?

2 A. Yes, sir.

3 Q. Well, I'm going to dispense
4 with wasting, you know, the time in
5 going through all of the different
6 preparatory things. Would that be
7 acceptable?

8 MR. SOLOMON:

9 Excuse me. If I may
10 interject, I have a
11 preliminary to --- should I
12 state it now or if you're
13 ready to proceed? I wasn't
14 aware if you had your
15 preliminary, and now it's ---.

16 ATTORNEY GUIDO:

17 He needs to put his
18 preliminary on the record
19 before.

20 MR. SOLOMON:

21 Exactly.

22 ATTORNEY BAILEY:

23 I don't have any
24 objection. I mean, it's our
25 deposition, but you go right

1 ahead. You're recording by
2 alternative means today?

3 ATTORNEY GUIDO:

4 Yes.

5 ATTORNEY BAILEY:

6 Under the rules. Okay.
7 That's fine. Go ahead.

8 MR. SOLOMON:

9 My name is Michael
10 Solomon. I'm employed by
11 Sargent's Court Reporting
12 Service. Today's date is
13 March 27th, 2002. The time is
14 approximately 9:20 a.m. This
15 deposition is being taken at
16 Technology Center, Bureau of
17 Tech Services, 2629 Market
18 Place, Harrisburg,
19 Pennsylvania 17110. The
20 caption of this case is in the
21 United States District Court
22 for the Middle District of
23 Pennsylvania. Darrell G.
24 Ober, Plaintiff, versus Paul
25 Evanko, Mark Campbell, Thomas

1 Coury, Joseph Wescott,
2 Hawthorne Conley. Civil
3 action case number 1CV-010084.
4 The name of the witness is
5 Paul Evanko. Will the
6 attorneys present state your
7 names and the parties that you
8 represent?

9 ATTORNEY GUIDO:

10 Was that --- did we
11 capture that already?

12 MR. SOLOMON:

13 The court reporter may
14 now administer the oath.

15 ATTORNEY GUIDO:

16 I think we've got that,
17 so we're okay. Okay. Thank
18 you very much. Thank you, Mr.
19 Bailey.

20 ATTORNEY BAILEY:

21 Thank you, sir. Thank
22 you, Syndi.

23 BY ATTORNEY BAILEY:

24 Q. Okay. Colonel, I'm going to
25 --- can I safely dispense with all

1 the preparatories? I think you've
2 heard them enough times, you're
3 probably sick of hearing them. Is
4 that fair to say or do you want me to
5 repeat them?

6 A. I do understand them.

7 Q. All right, sir. Have you been
8 practicing for this deposition?

9 A. Not really.

10 Q. And doing any on-camera work
11 or techniques and that sort of thing?

12 A. No, sir.

13 Q. Okay. Colonel, what is a
14 Mason? Who are the Masons?

15 A. It is a fraternal charitable
16 organization.

17 Q. Having had some experience
18 with them myself, they do some
19 tremendously good and positive work
20 out there; don't they?

21 ATTORNEY GUIDO:

22 Just one moment. I'd
23 like to add that we're
24 reserving all objections other
25 than form of the question.

1 ATTORNEY BAILEY:

2 Sure.

3 BY ATTORNEY BAILEY:

4 Q. I mean, they do some very good
5 and positive things out there; right?

6 A. Yes, sir.

7 Q. Okay. Do you know a guy by
8 the name of, I think it's Oaks
9 (phonetic), Joe Oaks?

10 A. No, I do not.

11 Q. John Oaks?

12 A. No, I do not.

13 Q. Never heard of anybody by that
14 name?

15 A. No, sir.

16 Q. Do you know who PNC Bank is?

17 A. I know that there's a PNC
18 Bank.

19 Q. Did you ever activate state
20 police cert teams, both the west and
21 the east, to transfer money for them?

22 A. For the Masons for PNC.

23 Q. For PNC?

24 A. Yes, several years ago I did
25 authorize and escort a large sum of

1 money for PNC.

2 Q. How much money?

3 A. It was in the vicinity of five
4 to six million dollars in negotiable
5 estimates.

6 Q. And where was that --- did the
7 Governor approve that?

8 A. I approved it.

9 Q. Did you communicate with the
10 Governor's Office about that?

11 A. I don't remember talking to
12 anybody about it.

13 Q. Do you remember what you ---
14 did you bill PNC for that?

15 A. Not that I recall.

16 Q. Well, let's see. How many
17 people in the eastern cert team,
18 Pennsylvania State Police Officers?

19 A. I'm not sure what the number
20 is. I would guess 15 to 20.

21 Q. How about in the western team?

22 A. The same.

23 Q. Why did you do that?

24 A. We had a request from PNC Bank
25 to assist in the security of that

1 transport of that large money.

2 Q. Is it your testimony here
3 today that that's a cert team
4 mission? That's consistent with
5 their mission?

6 A. I think it would be consistent
7 with their mission, yes.

8 Q. You used a helicopter?

9 A. I am not sure.

10 Q. What route did you use? Was
11 it along the Pennsylvania Turnpike?

12 A. I do not know.

13 Q. Do you know if Mr. Wescott
14 played a role in that?

15 A. He probably coordinated that.

16 Q. Do you know what that cost
17 taxpayers?

18 A. No, I do not.

19 Q. All right. I hope that you
20 will believe me. I'm not trying to
21 be facetious or argumentative when I
22 ask this question. Do you know what
23 a cup of coffee cost in Indiana
24 County, Pennsylvania a couple of
25 years ago?

1 A. No, I do not.

2 Q. Have you ever authorized
3 swimming parties out of the academy
4 pool or some swimming pool or
5 swimming place you have around here?

6 A. No, I did not.

7 Q. Did your daughter ever have
8 any people out there for any kind of
9 events?

10 A. Not that I remember, no.

11 Q. State police lifeguards were
12 never used at any events that have
13 been held there, that you know of?

14 A. No, sir.

15 Q. Okay. I'm going to ask you a
16 few questions about the academy and
17 any knowledge or experience you may
18 have with the academy; okay? Are you
19 familiar with a trooper who came from
20 Illinois who had some very severe
21 background problems and who was
22 allowed into or allowed to go to the
23 academy or to become a Pennsylvania
24 State policeman? I'm not sure of the
25 name. I think it might be Evans.

1 I'm not certain. Do you have any
2 knowledge of that?

3 A. I know that we had a case
4 involving Trooper Evans. He had to
5 be arrested.

6 Q. And do you know whether he had
7 any prior, before he was arrested ---
8 I don't have a great deal of
9 knowledge of it, I must confess to
10 you, sir, but was he arrested for
11 abusing a female or abusing a woman,
12 or at least accused of that?

13 A. We arrested and I think
14 convicted him of that.

15 Q. How did he become a
16 Pennsylvania State Policeman?

17 A. Probably went through the
18 written examination, the oral
19 interview, the physical fitness
20 tests, et cetera, et cetera.

21 Q. Did he have any help along the
22 way that you know of?

23 A. Not that I know of.

24 Q. Any assistance from you at
25 all?

1 A. None from me.

2 Q. How about Mr. Coury, if you
3 know?

4 A. I don't know of any assistance
5 that he had.

6 Q. Okay. Thank you. Did you
7 have that situation investigated?

8 A. I think we investigated and
9 arrested him.

10 Q. Well, you investigated the
11 allegations against him for
12 mistreatment of the female citizen;
13 am I correct?

14 A. I think we both did a BPR
15 investigation and a criminal
16 investigation.

17 Q. How did the BPR investigation,
18 what did it yield about how he became
19 a Pennsylvania State Police Officer?

20 A. I wouldn't know unless I
21 looked at that.

22 Q. Have you ever looked at it?

23 A. I don't recall.

24 Q. Does your daughter have a
25 riding instructor?

1 A. Yes, she's had a number of
2 riding instructors.

3 Q. Do you know the names of any
4 of them?

5 A. Beth McCann (phonetic) and her
6 last name is Baker. Those were her
7 two primary riding instructors.

8 Q. Is one of them a Pennsylvania
9 State Trooper now?

10 A. No, sir.

11 Q. Did any of her riding
12 instructors ever become Pennsylvania
13 State Troopers?

14 A. No, sir.

15 Q. Have you ever ordered an
16 entire class or group of applicants
17 at the academy retested?

18 A. In what regard, sir?

19 Q. Colonel, I don't know, sir.
20 Any regard that might please you.
21 I've been impressed with the --- what
22 your witnesses so far have told us
23 about the powers of the colonel
24 commissioner here. I don't know what
25 your reasons would have been. I'm

1 going to try to find out. But did
2 you ever order a group retested?

3 A. I do not recall ordering any
4 group of applicants retested.

5 Q. Did you ever make a request
6 that they be retested?

7 A. If we're talking about the
8 allegations of unfairness and
9 uniformity, the unfairness of the
10 physical fitness testing, the
11 complaint that's filed with us, if
12 that's what we're talking about, I am
13 aware of that and I took a complaint
14 from an individual by the name of
15 Colleen Young, sent the complaint to
16 the Deputy Commissioner of
17 Administration to consult with the
18 Chief Counsel's Office and what to do
19 with that complaint.

20 Q. Colleen Young?

21 A. Yes.

22 Q. Was she ever your daughter's
23 --- a riding instructor for your
24 daughter?

25 A. No, sir.

1 Q. Did you know her prior to this
2 request?

3 A. Yes, I did.

4 Q. And how did you know her, sir?

5 A. She rode with my daughter.

6 Q. Do you recollect what her
7 complaint was?

8 A. She was challenging the
9 uniformity and fairness of the
10 physical fitness testing of the
11 department.

12 Q. Did you change the test or
13 have the test altered in some way,
14 either as to criteria or format?

15 A. I don't think so.

16 Q. So you did at least request
17 that there be a retest or that
18 somebody analyze the situation with
19 an eye to at least considering that
20 there be a retest; is that fair to
21 say?

22 A. It's fair to say that I
23 received the complaint and I
24 forwarded it to the Deputy
25 Commissioner of Administration to

1 consult with the Chief Counsel's
2 Office and evaluate the complaint and
3 do whatever was right.

4 Q. Colleen Young failed the test
5 the first time; is that right?

6 A. I believe that she did.

7 Q. Who else failed it the first
8 time?

9 A. I don't know.

10 Q. Well, did you ever have the
11 matter looked into or, you know, to
12 verify it or test it?

13 A. Other than to receive the
14 complaint and send it to the Deputy
15 Commissioner of Administration.

16 Q. Do you know whether any
17 Pennsylvania Troopers ever came to
18 your door or came to you over a hit
19 and run incident and a potential DUI?

20 A. I don't know of any.

21 Q. You don't recall any?

22 A. That's correct.

23 Q. Colonel, do you know of anyone
24 putting documents into or taking
25 documents out of any of the files in

1 this matter, this case that we're
2 dealing with here? Do you know of
3 anyone doing that? Do you have any
4 knowledge of anyone who --- any of
5 your attorneys or any of your staff
6 doing anything like that?

7 A. Yes, I do.

8 Q. And tell me about it, please.

9 A. I understand that Major
10 Merryman (phonetic), Director of the
11 Bureau of Research and Development,
12 removed files from this bureau and
13 met with Captain Ober in a parking
14 lot somewhere.

15 Q. Okay. Aside from Major
16 Merryman, is that the historic file?

17 A. I think that's the state
18 police record.

19 Q. Well, what have you done to
20 Major Merryman about that?

21 A. I haven't done anything.

22 Q. Well, are you going to punish
23 him?

24 A. I don't have any intention to.

25 Q. Well, did he violate a

1 regulation?

2 A. I'm not sure that he did
3 violate a regulation.

4 Q. Well, do you know of any other
5 circumstances where that historic
6 file was taken out of the --- and
7 it's, I guess, you said removed? I
8 mean, your words were removed a file.
9 That's what I have as a quote here,
10 removed files. Any other
11 circumstances where that was removed,
12 that files were removed?

13 A. And that's the only one that
14 I know of.

15 Q. How about Captain Ober's
16 personnel files? Do you have any
17 knowledge of them, where they might
18 be?

19 A. I would imagine that they're
20 in the vault with all the rest of the
21 personnel files.

22 Q. Well, sir, I assume that your
23 attorneys have gone over a document
24 request that we have made with you or
25 at least made you aware of them. Do

1 you know where, and operating on that
2 assumption, do you know where Mr.
3 Ober's personnel files are?

4 A. Again, I would imagine that
5 they're in the vault with the rest of
6 the personnel files.

7 Q. Well, do you have a file on
8 Captain Ober?

9 A. No, I do not.

10 Q. Ever had a file on Captain
11 Ober?

12 A. No, I have not.

13 Q. And aside from the e-mail that
14 you provided, you don't have any
15 documents on Captain Ober; is that
16 right?

17 A. That is correct.

18 Q. Well, why did you keep that e-
19 mail?

20 A. It had to do overall with the
21 reorganization, civilianization of
22 the department and we kept a folder
23 on those issues.

24 Q. All right. Well, is there a
25 bureau personnel file then on Captain

1 Ober? Would there be a, like a
2 bureau wherever he is, a personnel
3 file with the bureau?

4 A. I think the bureaus do keep
5 some type of folders on each of their
6 members.

7 Q. And is there a personnel file
8 somewhere else?

9 A. Not that I know of, no.

10 Q. Okay. Do you have a
11 recollection of Captain Ober wanting
12 to go to a School of Police Staff and
13 Command, which was sent to the Bureau
14 of Personnel on or about October
15 19th, 1999, reference Special Order
16 99-102 dated October 7, 1999?

17 A. No, I do not.

18 Q. Well, if I indicated to you
19 that this document ---.

20 ATTORNEY GUIDO:

21 Can we have the
22 document marked if it is going
23 to be shown to the witness?

24 ATTORNEY BAILEY:

25 Sure. You can mark it.

1 A. Ann Alfono (phonetic) was the
2 other instructor, riding instructor.

3 BY ATTORNEY BAILEY:

4 Q. Ann Alfono?

5 ATTORNEY GUIDO:

6 Exhibit One.

7 (Deposition Exhibit One
8 marked for
9 identification.)

10 ATTORNEY CHRISTIE:

11 Do you have a copy,

12 Counsel, for ---?

13 ATTORNEY BAILEY:

14 You can have a dozen
15 copies, because we really love
16 you over here. We'd be happy
17 to give you copies.

18 ATTORNEY CHRISTIE:

19 Like right now?

20 ATTORNEY BAILEY:

21 No, we don't have any
22 copies right now.

23 ATTORNEY CHRISTIE:

24 All right. Then may we
25 have an opportunity to review

1 this before the Commissioner
2 goes - - - .

3 ATTORNEY BAILEY:

4 As soon as I'm done, we
5 can, yes. Yes, you can have
6 an opportunity to review it,
7 sure.

8 ATTORNEY CHRISTIE:

9 Thanks.

10 ATTORNEY BAILEY:

11 Well, that's all right.

12 BY ATTORNEY BAILEY:

13 Q. Colonel, what would you do to
14 somebody if they altered or took a
15 document out of Mr. Ober's file in
16 order to affect the course of this
17 litigation? What action would you
18 take?

19 A. Again, what's the question?

20 Q. Well, do you know whether Mr.
21 Coury approved or disapproved that
22 action?

23 A. I don't know.

24 Q. Do you know if Mr. Coury
25 disapproved that action because he

1 indicated to Mr. Ober that it was ---
2 came to the bureau too late?

3 A. I don't have any idea.

4 Q. Do you know whether that
5 document as it existed in Captain
6 Ober's file which I will represent to
7 you, sir, he recently checked, had a
8 date notation on the bottom of it,
9 and that that document has been ---
10 was in his file, and that that
11 document has been removed from his
12 file?

13 A. I have no idea.

14 Q. I would like to --- I'm
15 representing to you that there was a
16 document in that file with a date
17 notation at the very bottom of that
18 very document that said BTS personnel
19 10/20/99. Do you know who BTS is?

20 A. They're probably the
21 abbreviation for Bureau of Technology
22 Services.

23 Q. Okay.

24 ATTORNEY BAILEY:

25 I know it wasn't

1 provided during discovery.

2 BY ATTORNEY BAILEY:

3 Q. I would ask, how far would
4 Captain Ober's file be from here?
5 Where would it be from here?

6 A. Headquarters.

7 Q. Headquarters? Oh, geez.

8 ATTORNEY BAILEY:

9 I would like to
10 suspend. I'd like Captain
11 Ober to go over there. Maybe
12 Mr. Brown can go with him,
13 since he's the investigator in
14 this case. And I'd like that
15 file to be looked at to see
16 where that document is and if
17 it has a date proof on the
18 bottom.

19 ATTORNEY GUIDO:

20 We're not going to do
21 that in the middle of the
22 deposition.

23 ATTORNEY BAILEY:

24 You're going to refuse
25 to do that?

1 ATTORNEY GUIDO:

2 Yes.

3 ATTORNEY CHRISTIE:

4 Counsel, you had
5 opportunity to view the
6 Plaintiff's file on March the
7 8th as among the number of
8 things that were produced for
9 your inspection at
10 headquarters.

11 ATTORNEY BAILEY:

12 Well, I'm representing
13 for the record that that
14 document was not in that file,
15 that it was taken out of that
16 file, and it is still out of
17 that file. And that I'm going
18 to repeat accusations I've
19 made in the past that someone
20 has intentionally altered and
21 interfered with the file.

22 ATTORNEY CHRISTIE:

23 Well, Counsel, I find
24 it curious --- oh, I'm sorry.
25 Finish. I'm sorry I

1 interrupted you.

2 ATTORNEY BAILEY:

3 And we checked that
4 file as of this morning. And
5 we think that somebody has
6 taken documents out of the
7 file. I don't see how we
8 inconvenience anybody here. I
9 can understand your being
10 afraid maybe, and I don't know
11 why ---.

12 ATTORNEY GUIDO:

13 We are not afraid, sir,
14 but we're not interrupting
15 this deposition for that
16 purpose. We provided you with
17 what we provided you. You
18 know, it will inconvenience
19 people because this is the day
20 for the deposition. Colonel
21 Evanko's cleared his schedule
22 for it, and if we take time to
23 go to the headquarters it's
24 going to delay the deposition
25 and we're just not going to do

1 it.

2 ATTORNEY BAILEY:

3 Okay. Well, we're
4 going to have a lunch break.
5 I want to have Mr. Ober go
6 over and look at his file over
7 the lunch break, Colonel.

8 ATTORNEY GUIDO:

9 He can do whatever he
10 likes during lunch.

11 BY ATTORNEY BAILEY:

12 Q. I want to represent ---.

13 ATTORNEY BAILEY:

14 Please, ma'am, please.
15 Do you have an objection to
16 place on the record?

17 ATTORNEY GUIDO:

18 I said to your request,
19 yes, he can do what he likes
20 during lunch if that's your
21 representation.

22 ATTORNEY BAILEY:

23 Well, it's ---.

24 ATTORNEY GUIDO:

25 But what I'm saying is

1 let's have the questions of
2 the Colonel.

3 ATTORNEY BAILEY:

4 Let the record show
5 that I deeply appreciate
6 Counsel's permission to do
7 what we want during lunch
8 break.

9 BY ATTORNEY BAILEY:

10 Q. But what I was going to ask
11 you, Colonel, is would you mind if
12 --- do you have any objection to
13 directing Mr. Brown to go with him?

14 A. That would be up to my
15 Counsel.

16 Q. Okay. So your Counsel direct
17 Mr. Brown.

18 ATTORNEY BAILEY:

19 Well, Counsel, I'll
20 make the request and you can
21 consider it that Mr. Brown go
22 along to look at that file
23 over there today.

24 BY ATTORNEY BAILEY:

25 Q. And I'm representing to you,

1 Colonel, that that file has been
2 interfered with. But your testimony
3 here today is that you have no
4 knowledge of that; is that correct?

5 A. That is correct.

6 ATTORNEY CHRISTIE:

7 And might I just note
8 also on the record that,
9 Counsel, you were given an
10 opportunity to review those
11 items which were produced
12 pursuant to the request for
13 production of documents that
14 you made on March the 8th, if
15 I recall. You spent
16 approximately, what five, six
17 hours there to review, among
18 other things, I'm sure this
19 personnel file. And I do find
20 it curious that there was no
21 mention, in addition to your
22 green ink mention, there was
23 no mention whatsoever of this
24 document or any other document
25 being missing from the

1 Plaintiff's personnel file.

2 But you also, you had
3 opportunity to copy those
4 documents, including that in
5 the personnel file. I might
6 note also you appear to have a
7 copy of that document here
8 today, which is now marked
9 Exhibit One.

10 ATTORNEY BAILEY:

11 Counsel, let me just
12 provide just a little bit of a
13 rejoinder. I can't copy what
14 isn't given to me. That's my
15 response to you, ma'am.

16 ATTORNEY CHRISTIE:

17 Well, I just note,
18 Counsel, again, not to repeat,
19 but you do appear to have a
20 copy ---

21 ATTORNEY BAILEY:

22 I don't care ---.

23 ATTORNEY CHRISTIE:

24 --- of what you contend
25 is missing from the

1 Plaintiff's file and certainly
2 there was no such contention
3 made on March the 8th during
4 the time of your inspection of
5 that material.

6 ATTORNEY BAILEY:

7 I don't think I have a
8 duty to catch every little
9 piece of whatever is going on
10 around here on March the 8th,
11 because there's some very
12 strange things.

13 ATTORNEY GUIDO:

14 For all we know Captain
15 Ober or yourself removed it
16 from the file. Can we get on
17 with the deposition.

18 ATTORNEY BAILEY:

19 No, no, ma'am. I'm
20 sorry. You --- first of all,
21 you were not there and I
22 realize you investigated this
23 case to begin with, but you
24 had a representative there at
25 all times and we didn't remove

1 anything from the file.

2 ATTORNEY GUIDO:

3 I didn't mean that.
4 You just said that Captain
5 Ober has repeatedly gone and
6 reviewed his personnel file.
7 I'm not talking about March
8 8th necessarily with Captain
9 Ober.

10 ATTORNEY BAILEY:

11 But you're not implying
12 that Captain Ober removed
13 something from the personnel
14 file?

15 ATTORNEY GUIDO:

16 Sure. I'm implying he
17 possibly did. I don't know.

18 ATTORNEY BAILEY:

19 Is he allowed to have
20 --- he's allowed to copy his
21 file. Are you implying that
22 he took things from the file?

23 ATTORNEY GUIDO:

24 You're implying someone
25 took things.

1 ATTORNEY BAILEY:

2 Yes, I am. Yes, I am.

3 ATTORNEY GUIDO:

4 What I am saying is
5 someone took them. For all we
6 know Captain Ober took them.

7 ATTORNEY BAILEY:

8 Well, for all you know,
9 we're going to find out about.
10 That is a key material issue
11 in this case. And it's a key
12 material allegation in the
13 case. So we'll have an
14 opportunity to review these
15 files. It may be there. I'll
16 be very curious to find out if
17 it is. But so far you're
18 refusing us an opportunity to
19 go right now and look at it
20 and I understand that you're
21 taking that position.

22 BY ATTORNEY BAILEY:

23 Q. Now, Colonel, let me change
24 gears just a little bit here to
25 something else. Just a second here.

1 I'm going to ask you about a series
2 of things. I'm going to ask you
3 about --- just go over a little bit
4 about ---.

5 ATTORNEY CHRISTIE:

6 Excuse us, Counsel.

7 ATTORNEY GUIDO:

8 We're having a
9 discussion about the document.
10 The document's been handed to
11 the court reporter. By the
12 end of the day we'll make sure
13 during a break we'll get a
14 copy. Thank you.

15 BY ATTORNEY BAILEY:

16 Q. When did you first become
17 aware that there had been an FBI
18 investigation into the academy and
19 the appointment of cadets?

20 A. May 12th, 1999.

21 Q. And how did you become aware
22 of that?

23 A. Through Lieutenant Colonel
24 Hikus (phonetic) and Captain Ober.

25 Q. And where were you when you

1 became aware of that?

2 A. At the academy in Hershey.

3 Q. And what was the event?

4 A. It was a corporal promotion
5 ceremony.

6 Q. Now, who informed you?

7 A. Lieutenant Colonel Hikus and
8 Captain Ober.

9 Q. And is that all? Only those
10 two were present when they informed
11 you?

12 A. Yes, sir.

13 Q. And what did they say to you?

14 A. They initially asked if they
15 could see me, because they had
16 something they wanted to tell me. We
17 then went into the Office of the
18 Bureau of Training and Education, we
19 sat down. Lieutenant Colonel Hikus
20 began by saying that shortly after he
21 was appointed to the position of
22 Lieutenant Colonel, Deputy
23 Commissioner of Staff, that Captain
24 Ober had come to him and asked if he
25 could speak with him and told him

1 that while he was acting director of
2 the Bureau of Professional
3 Responsibility in late September or
4 early October an FBI agent from the
5 Pittsburgh office called BPR and
6 talked to him and told him that they
7 were conducting a political
8 corruption investigation and that
9 part of that political corruption
10 investigation involved high-ranking
11 officials or individuals in the state
12 police and/or the Governor's Office
13 or both.

14 Q. Okay. And what was your
15 reaction?

16 A. I listened and let them
17 continue.

18 Q. You listened and let them
19 continue. Well, did you say anything
20 at some point?

21 A. At some point I became very
22 angry at what I was listening to and
23 said that the SAC in Pittsburgh is a
24 friend of mine and I ought to pick up
25 the phone and call him. In fact,

1 Director Freeh is a friend of mine.
2 And I picked up the phone and called
3 him and if they were conducting a
4 political corruption investigation
5 into the higher ranks of the state
6 police that SAC ought to be
7 transferred and he hadn't told me.

8 Q. Why should the SAC be
9 transferred if he's conducting an
10 investigation into possibly you?

11 A. Because I didn't even think
12 that I was being included in that
13 when they originally briefed me. It
14 wasn't until the day after May 12th,
15 the day after that, that Lieutenant
16 Colonel Hikus told me that the quote,
17 term, end quote, colonel was used.
18 That was May 13th.

19 Q. Do you trust your officers to
20 conduct themselves in accordance with
21 good ethical principles in an
22 investigation?

23 A. That's my expectation.

24 Q. Were you concerned that if you
25 weren't told that that might be

1 embarrassing to you?

2 A. Rephrase it, please.

3 Q. Were you concerned that you
4 weren't --- you not being told that
5 that could be embarrassing to you?

6 A. That was one of my concerns,
7 yes.

8 Q. Well, what were your other
9 concerns?

10 A. I had a number of other
11 concerns. Lieutenant Colonel Hikus
12 was telling me that shortly after he
13 was appointed that Captain Ober comes
14 to him. I found out that's October
15 5th. And the very first thing that
16 the newly appointed lieutenant
17 colonel was told by me was that if
18 you have incidents that significantly
19 affect the department or significant
20 initiatives, anything significant
21 about the department, to come to me
22 and keep me informed and up to date
23 of things. That's the very first
24 thing that I told the lieutenant
25 colonel. As soon as he started

1 talking I said, didn't we have a
2 conversation that very first day to
3 keep me informed.

4 I was also concerned that
5 during their briefing to me they told
6 me that they had received this
7 information from the FBI that it was
8 closed and unfounded two weeks
9 earlier. And I'm thinking, two weeks
10 earlier, why wasn't I told two weeks
11 earlier? I was also concerned
12 because the lieutenant colonel had
13 been told again on those first couple
14 days of his command, if you're going
15 to be involved in the other deputy
16 commissioners' commands to make sure
17 that you talk to them, don't do
18 anything unilaterally. He said,
19 that's my expectation from them and
20 you as well. And it didn't seem
21 reasonable to me what I was hearing.
22 I said, how can the FBI conduct it
23 themselves, allegedly conducting this
24 inquiry?

25 Q. Well, so your --- the primary

1 reason for your upset was that
2 somebody hadn't told you earlier?

3 ATTORNEY CHRISTIE:

4 I object. I don't
5 think that's what the
6 Commissioner said. What I'm
7 objecting to is to form.

8 BY ATTORNEY BAILEY:

9 Q. Well, let me ask you. Is that
10 what you're saying?

11 A. That was one of four reasons.

12 Q. Okay. One of four reasons.
13 So was that the major reason, that
14 you hadn't been informed early
15 enough?

16 A. That was one of the major
17 reasons, yes.

18 Q. Okay. Now, whose duty was it
19 to inform you?

20 A. Lieutenant Colonel Hikus'.

21 Q. That's what I took from what
22 you said. The fact Colonel Hikus had
23 a duty to inform you. Did Lieutenant
24 Colonel Hikus tell you that he had
25 ordered --- we're going to deal later

1 with the issue of Captain Ober's
2 going to Lieutenant Colonel Hikus;
3 okay? I don't want to cloud this
4 question with that consideration, so
5 I want to be very specific with this.
6 Did Lieutenant Colonel Hikus indicate
7 to you that he had told or ordered
8 Captain Ober not to reveal what
9 Captain Ober knew?

10 A. Yes, he did.

11 Q. Okay. Now, Colonel, is it
12 fair to say that Lieutenant Colonel
13 Hikus told you that on the 12th, the
14 12th or the 13th? And I want to sort
15 this out, because I understand there
16 were more than one conversation. I
17 want to make sure we get a real good
18 fact picture here. So if you'd think
19 for just a moment and answer this
20 question. Do you recollect whether
21 Mr. Hikus told you on May 12th
22 initially while Captain Ober was
23 present that he had ordered Captain
24 Ober to keep this information close
25 to the vest and report only to him?

1 A. Yes, he did.

2 Q. Okay.

3 Now, did you respond to Lieutenant
4 Colonel Hikus at the point that he
5 told you that, and if so what did you
6 say?

7 A. I just listened.

8 Q. You just listened at that
9 point?

10 A. Yes, sir.

11 Q. Now, okay, right now we're
12 still talking about May 12th; okay?

13 A. I understand.

14 Q. All right, sir. Now, Mr. ---
15 did Captain Ober speak at that point?

16 A. He spoke at some point during
17 this briefing.

18 Q. Okay. Can you tell us, will
19 you share with us please what Captain
20 Ober said and if there was any
21 conversation between you and Captain
22 Ober.

23 A. I can't distinguish between
24 what was told to me by Lieutenant
25 Colonel Hikus and by Captain Ober.

1 It was primarily Lieutenant Colonel
2 Hikus that did the talking and
3 Captain Ober periodically said things
4 but I can't distinguish between the
5 two.

6 Q. Do you have a recollection of
7 asking Captain Ober any questions?

8 A. I had questions that I asked
9 to both of them.

10 Q. Now, at the point that Colonel
11 Hikus and Captain Ober told you about
12 the FBI investigation, they had
13 indicated that there were some kind
14 of fears that it had been into upper
15 reaches of the Pennsylvania State
16 Police and maybe the Governor's
17 Office or some Governor's personnel
18 or something like that; is that
19 correct?

20 A. The term higher-ranking
21 individuals.

22 Q. Okay.

23 A. And the state police and/or
24 the Governor's Office or both were
25 used.

1 Q. Now, at that point did you ---
2 you felt that they should have told
3 you earlier; is that correct?

4 A. Yes, sir.

5 Q. Why should they have told you
6 earlier? Now, I want to direct that
7 question to your attention, not over
8 any displeasure that they didn't tell
9 you two weeks earlier, but at the
10 inception of the FBI notification.
11 In other words, sir, you were upset
12 not just because they hadn't told you
13 two weeks earlier that the FBI had
14 told them that it was closed. You
15 were upset because they had not
16 initially notified you; is that
17 correct?

18 A. That was part of it, yes.

19 Q. Okay. Now, was that a ---
20 remember you sort of said, I think
21 you said four major reasons. I don't
22 know quite what you meant by that.
23 Would you tell us?

24 A. I was very angry by the fact
25 that as Lieutenant Colonel Hikus

1 started to brief me he said that
2 shortly after he was appointed in his
3 position that Captain Ober had come
4 to him. And I'm thinking in my mind,
5 shortly after you were appointed we
6 had just sat down and we had talked
7 about my directions to him to keep me
8 informed of significant events in the
9 department, that that was important
10 to me.

11 Q. Okay.

12 A. I was also concerned that when
13 he told me, or when Captain Ober told
14 me, whichever one did, that the FBI
15 had called them, called Captain Ober
16 two weeks earlier, I'm thinking two
17 weeks, why has it taken two weeks to
18 sit down with me and to brief me on
19 this?

20 Q. Is that B, sir?

21 A. And number third ---.

22 Q. Okay. Go ahead.

23 A. Number third was the fact in
24 the early days with Lieutenant
25 Colonel Hikus, and I'm talking the

1 first, second, and third and probably
2 the fourth day as well, had talked
3 about the necessity of not being
4 involved in the other deputy
5 commissioners' commands or if you
6 are, make sure you're talking and
7 coordinating with them, communicating
8 with them, because my expectation
9 from the other deputies is that they
10 won't do that to your command.

11 Number four ---.

12 Q. Can I ask one little question
13 right there before you do number
14 four? Just a little one?

15 A. Yes, sir.

16 Q. A deputy commissioner is a
17 colonel or a lieutenant colonel?

18 A. The deputy commissioners are
19 lieutenant colonels.

20 Q. They're all lieutenant
21 colonels?

22 A. Yes, they are.

23 Q. Okay. Go ahead, sir, number
24 four.

25 A. And number four had to do with

1 it didn't sound reasonable what I was
2 being told that the FBI had told them
3 or had told Captain Ober.

4 Q. Okay. Let's talk about didn't
5 sound reasonable first. All right,
6 sir. What didn't sound reasonable to
7 you, Colonel?

8 A. It didn't sound reasonable
9 that if an FBI office is doing an
10 investigation into the higher ranks
11 of the state police that a SAC would
12 have a street agent pick up the
13 phone, call across the state, talk to
14 an individual in BPR and tell them
15 that they were doing a political
16 corruption investigation into the
17 higher ranks of the state police and
18 not pick up the phone and tell me.
19 Because remember, I didn't learn
20 about the term, colonel, until the
21 following day.

22 Q. Sir, that's exactly what the
23 FBI did; didn't it?

24 A. That's what the FBI agent did,
25 yes.

1 Q. As you sit here today
2 answering my questions, you've got to
3 admit based on all of the facts
4 before us, that is precisely what the
5 FBI did; isn't it, sir?

6 A. An FBI agent did that.

7 Q. Okay. So it's not the FBI, it
8 is an FBI agent did that?

9 A. Let me put it this way.

10 Q. Sure.

11 A. It's an allegation or it was
12 portrayed that way by Captain Ober to
13 Lieutenant Colonel Hikus.

14 Q. Now, all right, that's fair
15 enough. Now, what facts known to you
16 as we sit here today indicate that
17 that isn't what happened?

18 A. The issue of high-ranking
19 officials or individuals in the state
20 police and/or the Governor's Office
21 was not told to Captain Ober by the
22 agent that called him.

23 Q. Wasn't it?

24 A. No.

25 Q. You're not, and again, this is

1 not meant to be facetious, you're not
2 indicating for us that Captain Ober
3 is clairvoyant or can tell the
4 future; are you?

5 A. No, I'm not.

6 Q. Of course not. I mean, that
7 would be, that would be silly and we
8 don't have any facts on the record to
9 indicate that he has some
10 supernatural ability; right?

11 A. That is correct.

12 Q. All right. But we do know
13 that strangely enough, according to
14 what facts have been shared with us
15 by our FBI friends and your
16 investigators, that indeed on a wire
17 procured with the help of an FBI
18 confidential informant that, in fact,
19 things of that nature were said, but
20 supposedly now, supposedly, if we
21 believe the FBI and your
22 investigator's findings, this
23 occurred a couple of weeks after
24 Captain Ober was told, was initially
25 contacted by the FBI agent; right?

1 Is that correct?

2 A. It is my understanding that on
3 October 21st Captain Ober listened to
4 a videotape or an audiotape with the
5 FBI where a confidential --- where
6 the applicant for the alleged job-
7 selling scheme said that she would
8 have to go to some lieutenant colonel
9 or someone affiliated with the state
10 police.

11 Q. Okay. And so you're
12 suggesting that Mr. Cush (phonetic)
13 didn't say anything to Mr. Ober about
14 any lieutenant colonel or any higher-
15 ups or anything like that sometime on
16 or about the beginning of October;
17 right?

18 A. From reading the reports,
19 that's what my understanding is.

20 Q. Okay. Well, why didn't you
21 punish Ober if he --- I mean, he got
22 lucky. In other words, Ober got
23 lucky that a couple weeks later this
24 CI just happened to mention, at least
25 we know a lieutenant colonel or

1 something to that effect, let alone
2 what the FBI agent said or didn't
3 say. So Ober just got lucky; right?

4 A. I don't know what happened
5 there.

6 Q. Well, that's interesting. You
7 don't know what happened? Well, if
8 you don't know what happened, can you
9 tell us now, who do you think had the
10 best recollection of that October 5th
11 conversation between Mr. Cush and Mr.
12 Ober? Have you reached any
13 conclusions about that?

14 A. No, I have not.

15 Q. You haven't? So Mr. Ober must
16 have just gotten lucky and mentioned
17 this to Colonel Hikus that there were
18 some higher-ups or colonels or
19 something of that sort, lieutenant
20 colonel, whatever the rank was, who
21 knows, that this CI mentioned; right?

22 A. What Colonel Hikus told me was
23 on May 13th that the quote, term, end
24 quote, colonel was used.

25 Q. Okay. Well, why didn't you

1 punish Ober for that if you --- I
2 mean, do you believe Ober
3 misrepresented what happened on
4 October 5th or early October?

5 A. I don't know what happened
6 there.

7 Q. Okay. Well, so at least as of
8 May 12th you are told that sometime
9 on or about the beginning of October
10 '98 that an FBI agent goes to Mr.
11 Ober and tells him about this FBI
12 investigation; right?

13 A. Yes, that an FBI agent in late
14 September or early October called BPR
15 and spoke with Captain Ober.

16 Q. All right. Now, you found
17 that odd. And I'm not, you know ---
18 by the way, sir, I do too. I find it
19 odd. Did you ever find out why the
20 FBI did that this way?

21 A. No, I didn't.

22 Q. Did they suspect you?

23 A. It was not my understanding
24 that they suspected me. That's part
25 of the reason that I was concerned

1 that I wasn't informed.

2 Q. You were concerned that they
3 had suspected you; weren't you? In
4 fact, you said that; didn't you?

5 A. I was not concerned that I ---
6 in fact, I didn't even think that
7 they suspected me being involved on
8 May 12th. The only time that that
9 came out was on May 13th when the
10 lieutenant colonel had just mentioned
11 to me that Captain Ober told him the
12 term colonel was used.

13 Q. Well, then why didn't the FBI
14 call you up and tell you?

15 A. I don't know.

16 Q. You don't know to this very
17 day?

18 A. I would take it from my
19 conversations with the SAC ---.

20 Q. That's Rick?

21 A. The special agent in charge,
22 Rick Mascara.

23 Q. All right.

24 A. And when I called him on May
25 20th and he didn't know anything

1 about the investigation.

2 Q. Sir, Mr. Mascara told you on
3 May the 20th, 1999 that he didn't
4 know anything about this
5 investigation?

6 A. I think the words that were
7 used is when I made an inquiry to him
8 over the telephone, he said to me,
9 what inquiry, what investigation?
10 And the quote, I believe, was I have
11 to plead with ignorance here.

12 Q. Do you believe him?

13 A. Yes, I do.

14 Q. Now, if Mr. Mascara's telling
15 the truth, that means that as of May
16 20th, 1999, he had never been made
17 aware by the CIA --- excuse me,
18 please, that a confidential
19 informant, CI, as they're called, I
20 guess, for the FBI had implicated
21 possibly high-ranking officials in
22 either the Governor's Office or a
23 lieutenant colonel by rank or colonel
24 by rank, whatever the CI imparted;
25 okay? Mr. Mascara didn't --- that

1 had not been brought to his attention
2 if what he told you May 20th was
3 true; is that correct?

4 A. That is correct.

5 Q. Or he didn't remember it?

6 A. He told me just that.

7 Q. Yes, which I would find very
8 hard to believe, but, hey, after all
9 it's an FBI agent. Now, did you
10 question Mr. Mascara further?

11 A. Yes, I did.

12 Q. Well, let's stop and go back
13 to May 12th for a minute. Did you
14 ever call Louie Freeh?

15 A. No, I did not.

16 Q. Did you ever call anyone in
17 his office?

18 A. No, I did not.

19 Q. Who in the FBI besides Mr.
20 Mascara did you call, if anyone?

21 A. Mr. Mascara's the only person
22 who I talked to in the FBI.

23 Q. Why did you wait until May
24 20th?

25 A. I can't tell you what else was

1 going on between May 12th and May
2 13th. That was the day I called him.
3 I can't tell you why.

4 Q. Well, when did you first call
5 Mr. Campbell?

6 A. I would have called Mr.
7 Campbell the afternoon of May 12th
8 when I got back to headquarters.

9 Q. Why?

10 A. To tell him what was just told
11 to me because it allegedly involved
12 high-ranking individuals in the state
13 police and/or the Governor's Office.

14 Q. And what did Mr. Campbell say?

15 A. He didn't say much of
16 anything.

17 Q. How current was the Gigliatti
18 (phonetic) matter at that time?

19 A. I don't have any idea.

20 Q. Do you have any knowledge of
21 any of the allegations surrounding
22 Gigliatti in the Governor's Office?

23 A. No, sir.

24 Q. Did you ever discuss the
25 Gigliatti matter with Mr. Mascara?

1 A. No, sir.

2 Q. How about Mr. Cush?

3 A. No, sir.

4 Q. Did you ever suspect that the

5 FBI killed this investigation that

6 you're talking about?

7 A. Killed which investigation?

8 Q. The one into this state police

9 academy thing.

10 A. That never entered my mind,

11 no. And nor do I think that.

12 Q. Could you trust the FBI?

13 A. Yes, I do.

14 Q. And they trust you?

15 A. Yes, they do.

16 Q. Well, did Mr. Mascara tell you

17 that, that they trust you?

18 A. No, we didn't discuss the

19 issue of trust.

20 Q. It's just assumed it's there;

21 right?

22 A. I assume it's there, yes.

23 Q. Do you trust your officers in

24 the Pennsylvania State Police?

25 A. Yes.

1 Q. Well, up to that point at
2 least you trusted Mr. Ober; didn't
3 you?

4 A. Yes.

5 Q. So on the trust scale you
6 decided in this matter that the FBI
7 was more trustworthy than Mr. Ober or
8 was it vice versa after all this was
9 done?

10 A. I didn't draw a distinction
11 between the two.

12 Q. Okay. Now, you had called Mr.
13 Campbell on the afternoon of the
14 12th. Was he your contact over there
15 in the Governor's Office?

16 A. Yes, sir.

17 Q. Did you ever find out when the
18 Governor's Office or anybody over
19 there was first aware of this FBI
20 interest?

21 A. My understanding is May 12th
22 when I told them.

23 Q. So the first time you knew
24 that Mary Woolly (phonetic) had been
25 talked to was when your attorney,

1 obviously possessed of this
2 knowledge, asked questions of Mr.
3 Hikus; is that correct, yesterday?

4 A. The first time that I actually
5 knew about it was in response to
6 Lieutenant Colonel Hikus' response.
7 Then I knew it.

8 Q. And that was just the other
9 day, Monday; wasn't it?

10 A. It was earlier this week.

11 Q. Earlier this week. Well, you
12 knew it --- is it fair to say the
13 first time you ever knew it was
14 within the last week; right?

15 A. Yes, sir.

16 Q. So you didn't know that there
17 were witnesses to this information
18 about Mr. Hikus talking to the
19 Governor's Office until a week ago,
20 somebody in the Governor's Office
21 until a week ago; right?

22 A. I knew it when Lieutenant
23 Colonel Hikus testified.

24 Q. And you knew it a little bit
25 before that, but not more than a week

1 before that; is that fair to say?

2 A. I had discussions with my
3 Counsel on that.

4 Q. Okay. Well, I'm saying time
5 wise, I'm not asking about
6 discussions with your attorney. I
7 just want to know when you first knew
8 it. You first knew it, you know, a
9 week before or less than a week
10 before Hikus responded to those
11 questions; is that fair to say?

12 A. It would be less than a week.

13 Q. Okay. Do you know what
14 voluntary disclosure is under Federal
15 rules in a Civil case?

16 A. No, I do not.

17 Q. Okay. Sir, I want to take you
18 back now to May 12th. You've talked
19 to Mark Campbell. Did Mark Campbell
20 give you any instructions or say
21 anything about what he thought you
22 should do or anything like that?

23 A. No, sir.

24 Q. Did you ask him for advise on
25 anything?

1 A. No, sir.

2 Q. So you were merely calling him
3 to inform him; is that correct?

4 A. Yes, sir. And I also told him
5 that I was going to conduct an
6 inquiry into the facts of this.

7 Q. Well, why did you want to
8 conduct an inquiry into the facts of
9 it? I thought Colonel Hikus had
10 indicated --- strike that.

11 Colonel Hikus had indicated to
12 you that the investigation, the FBI
13 had closed the investigation and that
14 it was, at least as to higher-ups, it
15 was unfounded; is that correct?

16 A. That is correct.

17 Q. Okay. And had Colonel Hikus
18 indicated to you that the extent of
19 the FBI investigation revealed that
20 to the best of their knowledge there
21 was basically one trooper, one
22 Pennsylvania State Police Trooper
23 involved?

24 A. Either Lieutenant Colonel
25 Hikus or Captain Ober told me that on

1 May 12th.

2 Q. Okay. All right. Did you
3 give Colonel Hikus or Captain Ober
4 any directions on May 12th? By that
5 I mean, you know, asked him to record
6 or asked him to check on something,
7 anything like that?

8 A. I probably told him on May
9 12th to put it on a piece of paper
10 what they'd just told me.

11 Q. Okay. Did you give them any
12 other instructions?

13 A. None that I recall.

14 Q. Did you believe that Captain
15 Ober had been disloyal to you?

16 A. I didn't think about loyalty.

17 Q. Have you ever thought about
18 loyalty?

19 A. Not really.

20 Q. Have you ever carried any
21 personal anger in you over this
22 matter?

23 A. Over the issue of not being
24 told about the FBI investigation?

25 Q. Yes, yes.

1 A. And the reasons under that?

2 Q. Yes, sir.

3 A. And have I ever been what?

4 Q. Have you carried any personal
5 anger with you over not being told by
6 Captain Ober when the FBI contacted
7 him?

8 A. No, sir.

9 Q. Have you carried any anger in
10 you against Colonel Hikus because he
11 ordered Captain Ober not to tell
12 anyone in October?

13 A. No, sir.

14 Q. Have you carried any anger in
15 you against Captain Ober because he
16 didn't tell, now Colonel, then Major,
17 Conley?

18 A. No, sir.

19 Q. Did you suspect on May 12th
20 that Captain Ober had violated a
21 Pennsylvania State Police Regulation?

22 A. I never gave it any thought.

23 Q. And you never have; have you?

24 A. No, not really.

25 Q. How about Colonel Hikus? Did

1 you ever consider that he had
2 violated a Pennsylvania State Police
3 Regulation on May 12th or since May
4 12th, have you --- I assume you
5 haven't thought about that either?

6 A. I thought about him not
7 following my directives on keeping me
8 informed of significant events that
9 we talked about October 5th, 6th, 7th
10 and 8th.

11 Q. Sir, why didn't you say, you
12 guys did the right thing? Didn't
13 they do the right thing, Colonel?

14 A. No, I think Lieutenant Colonel
15 Hikus should have told me.

16 Q. Well, did Captain Ober do the
17 right thing?

18 A. I think Captain Ober should
19 have told his bureau director.

20 Q. Why?

21 A. Because I think that's the
22 right thing to do.

23 Q. But it doesn't violate a
24 regulation; right?

25 A. No, sir. It violated a

1 practice of the department.

2 Q. A practice of the department?

3 A. Yes.

4 Q. Well, you believe that a ---
5 if the FBI's conducting an
6 investigation and they have reason to
7 believe that there may be higher-ups
8 in the Pennsylvania State Police
9 involved that they should come to
10 you. You actually believe that?

11 A. Unless they have strong
12 probable cause to believe that I am
13 involved, yes, I do.

14 Q. Okay. Why? Just so you know
15 and are not embarrassed; is that why?

16 A. I'm the head of the agency. I
17 have a responsibility to the agency.

18 Q. Well, Clinton's President of
19 the United States and we've seen that
20 fiasco. I mean, not that that
21 necessarily applies here, but I mean,
22 after all he's, you know, President
23 of the United States, not getting
24 into all the politics nonsense
25 surrounding that situation. I mean,

1 if someone is investigating potential
2 wrongdoing, don't they have a duty
3 under basic investigatory principles
4 to try to limit as much as possible
5 the dissemination of information in
6 an investigation or am I wrong about
7 that?

8 A. I think if the FBI has a
9 criminal investigation into higher-
10 ups in the state police, and I ---
11 and they don't have strong reasonable
12 or probable cause that I'm involved,
13 I think they have a responsibility to
14 come to me as the head of the agency.

15 Q. Okay. Well, let's --- and now
16 that is Colonel Evanko's point of
17 view; am I correct?

18 A. I think that would be any
19 superintendent or commissioner's
20 point of view.

21 Q. Well, do you know that it is
22 any superintendent's or let's say
23 high-ranking law enforcement
24 official's point of view?

25 A. I think if you talk to any

1 superintendent or commissioner of a
2 state police organization that would
3 be their expectation.

4 Q. And if somebody doesn't adhere
5 to that expectation should they be
6 punished?

7 A. I don't have the authority to
8 be punishing an FBI, special agent in
9 charge.

10 Q. What about your own people?
11 Should they be punished?

12 A. For what?

13 Q. I don't know. Not telling
14 you? I mean, you're telling me that
15 they --- sir, if I understand you
16 correctly, and I may not.

17 BRIEF INTERRUPTION

18 ATTORNEY BAILEY:

19 We'll suspend for just
20 five minutes.

21 VIDEOGRAPHER:

22 The time is 10:22 a.m.,
23 March 27th, 2002. We're
24 suspending the deposition.

25 SHORT BREAK TAKEN

1 ATTORNEY BAILEY:

2 Ladies and gentlemen,
3 this is Attorney Andrew
4 Ostrowski who's working with
5 me on this matter, is here
6 with us today.

7 VIDEOGRAPHER:

8 It's now 10:34 a.m. and
9 the deposition of Mr. Evanko
10 has resumed.

11 BY ATTORNEY BAILEY:

12 Q. Okay. Colonel, thank you very
13 much for the courtesy of allowing me
14 to contact my office and find out
15 that your erstwhile attorneys have
16 told Judge Caldwell that I smeared
17 some documents I'm going to ask you
18 about. So maybe that will get us a
19 hearing. Something good comes out of
20 everything, Colonel, in the legal
21 process. I want to go back, sir, if
22 I may to the questioning that I had
23 about the --- we're talking about
24 your state of mind and your thoughts
25 on the 12th and subsequent to the

1 12th, your thoughts about, and
2 conclusions about the conduct, the
3 acts or omissions of Colonel Hikus
4 and/or Captain Ober. So let me go
5 back to that and finish that up,
6 okay?

7 A. Yes, sir.

8 Q. All right, sir. Thank you.
9 Now, you had indicated that in
10 response to one of my questions that
11 you felt any supervisor in a law
12 enforcement field, unless there were
13 good probable cause to believe that
14 the head of the group were involved,
15 that in that type of scenario
16 generally that the head of the group
17 should be informed or should be told;
18 is that correct?

19 A. Yes, if the SAC in a field
20 office is doing a corruption
21 investigation of the higher-ups and
22 doesn't have strong probable cause to
23 believe that the head of the agency
24 is involved, it is my statement that
25 he should be calling or she should be

1 calling that head.

2 Q. Well, if BPR and the
3 Pennsylvania State Police receive a
4 complaint about you, Captain ---
5 let's say some captain somewhere, and
6 receives a complaint about you,
7 Colonel Evanko, should BPR tell you
8 before they do the investigation?

9 A. Give me a circumstance that
10 you are talking about.

11 Q. Well, in this particular case,
12 let's take this case here. Captain
13 Ober's recollection is that the FBI
14 had indicated that there were higher-
15 ups or somebody in some rank that was
16 lieutenant colonel or colonel or
17 somebody higher up, maybe in the
18 Governor's Office and maybe in the
19 Pennsylvania State Police, who could
20 be involved in this, and that he
21 passed that on, he passed that on to
22 Colonel Hikus. Colonel Hikus told
23 him, hey, you don't tell anybody, you
24 keep this information close to the
25 vest, you don't tell anybody but me.

1 Now, that's basically what happened;
2 right?

3 A. Yes, that is. That is what
4 happened when Captain Ober received
5 information from the FBI.

6 Q. Right.

7 A. Went past the hearing
8 commander to Lieutenant Colonel Hikus
9 and told Colonel Hikus.

10 Q. Okay. Now, what was Captain
11 Ober's assignment at that time? What
12 was he doing? I'm sorry, sir. I cut
13 you off. I'm sorry. Go ahead.

14 A. If that's the end of the
15 question?

16 Q. Yes, sir.

17 A. At the time that he went to
18 Lieutenant Colonel Hikus he was the
19 Director of Internal Affairs.

20 Q. He was, it's called IAD;
21 right? That division within BPR;
22 correct?

23 A. Yes, it is.

24 Q. Now, where was Mr. Conley at
25 that time?

1 A. Where was he physically?

2 Q. Sure. Where was he?

3 A. I believe he was, on October
4 or May 12th, I believe he was at a
5 funeral.

6 Q. Okay. And where was he in
7 terms of his assignment?

8 A. The Director of the Bureau of
9 Professional Responsibility.

10 Q. Now, is it fair to say that
11 you feel that Captain Ober should not
12 have gone to Colonel Hikus, Captain
13 Ober should have gone to Colonel
14 Conley?

15 A. Yes, that's what the field
16 regulation states.

17 Q. Yes. I'm sorry. What field
18 regulation?

19 A. FR 1-1.17.

20 Q. Okay. Now, we're going to
21 talk a little while later about
22 AR 1-102(c). But let me ask you. At
23 this point, you're telling us then
24 that, assuming Captain Ober had done
25 what you feel was the right thing,

81

1 and had gone to then Major Conley,
2 what should Major Conley have done?

3 A. Major Conley should have
4 informed the Deputy Commissioner of
5 Administration.

6 Q. Who was?

7 A. Lieutenant Colonel ^{Coury} Foy
8 (phonetic).

9 Q. Well, you told us that you
10 trust the FBI; right?

11 A. Yes.

12 Q. Do you have concerns that they
13 trust you?

14 A. No, I do not.

15 Q. Is it fair to say that you
16 think Mr. Cush messed up, made an
17 error?

18 A. In what regard do you mean
19 made an error?

20 Q. What should he have done?
21 Should he have told Rick? Now,
22 you're telling me he didn't tell Rick
23 because you talked to Rick on May
24 20th and Rick didn't know anything
25 about it. And you and I both know

1 doggone well that if some FBI agent
2 tells Rick that higher-ups at any
3 point, founded or not, that higher-
4 ups in the state police and the
5 Governor's Office are involved,
6 Rick's going to remember that,
7 Colonel. You and I both know that.
8 But he didn't know anything on May
9 20? Rick didn't know anything?

10 A. That's correct.

11 Q. All right, sir. Now, does
12 that mean that Mr. Cush screwed up?

13 A. No, because Mr. Cush, as I
14 remember his statement, said that he
15 did not mention high-ranking
16 individuals in either the state
17 police or the Governor's Office to
18 Captain Ober.

19 Q. He didn't mention them or he
20 didn't recollect it after Mr.
21 Williams went and talked to him?

22 A. I believe the words that he
23 used is I don't remember ever
24 mentioning higher-ups in the state
25 police or the Governor's Office.

1 Q. Which brings us back to
2 Captain Ober, if he was correct,
3 being either very lucky or just like
4 an incredible, you know, incredible
5 example of the law of probability I
6 guess if the CI was going to mention
7 this later on. But the point is that
8 if it involved Mr. Stanton; right?

9 A. Yes.

10 Q. If the investigation involved
11 Mr. Stanton, and it was a public
12 corruption investigation, and it
13 involved appointments to the academy,
14 you don't think Mr. Cush messed up
15 because there was no reason to
16 believe that higher-ups were
17 involved, at least in October; right?
18 The beginning of October?

19 A. First I think it is the
20 applicant to the state police that
21 mentions that someone would have to
22 go to a lieutenant colonel.

23 Q. Right.

24 A. Or someone affiliated with the
25 state police.

1 Q. Yes.

2 A. And I think if Cush had
3 information that quote, higher-ups,
4 or higher-up individuals or officials
5 from the state police or the
6 Governor's Office, he should have
7 reported that to his SAC.

8 Q. So I ask you, my question was,
9 did Cush mess up? And you said he
10 didn't mess up. Now, are you telling
11 me he messed up?

12 A. Not with the information that
13 he is saying he did not supply to
14 Captain Ober.

15 Q. But sir, they sat down and
16 listened to the tape together.

17 A. On October 21st.

18 Q. Yes, sir. Now, at that point
19 did Cush screw up? Did he mess up at
20 that point by not going to Rick?

21 A. I'm not sure.

22 Q. You're not sure?

23 A. Yes.

24 Q. Now, sir, we know that at
25 least by October 21, 1998 that Mr.

1 Cush is sitting right there, of
2 course he's telling Mr. Williams that
3 Mr. Ober's ears perked up. Mr. Cush
4 is sitting in a room listening to a
5 tape. Lieutenant colonels in the
6 state police are mentioned on that
7 tape. You call Rick May 20th of the
8 following year and he doesn't know
9 anything about this. But you don't
10 have --- you reached no conclusion
11 whether or not Mr. Cush screwed up by
12 not telling Rick?

13 A. I don't know what significance
14 Mr. Cush gave to the applicant saying
15 that someone would have to go to a
16 lieutenant colonel or someone
17 affiliated with the state police.

18 Q. Well, now, we have established
19 that one of your reasons for being
20 upset had to do with Hikus ostensibly
21 violating these instructions of yours
22 about stepping outside his area of
23 responsibility; correct?

24 A. That was one of the concerns I
25 had.

1 Q. Sure. Now, you've also agreed
2 with me that sometime on or about
3 October of 1998 this FBI CI mentions
4 lieutenant colonels; correct?

5 A. No.

6 Q. They didn't? The tape didn't
7 say that?

8 A. No.

9 Q. Your transcript of October
10 doesn't say that, October 13th, '98
11 doesn't say, doesn't use the word
12 lieutenant colonel?

13 A. Not by the CI, no.

14 Q. Who by?

15 A. The applicant, Bridges.

16 Q. Okay. But they're mentioned;
17 right?

18 A. The applicant states again
19 somebody would have to go to a
20 lieutenant colonel or someone
21 affiliated with the state police.

22 Q. Did Bridges know anybody
23 involved in politics?

24 A. I don't know.

25 Q. Do you know who Leonard Bodack

1 is?

2 A. He is a State or was a State
3 Senator.

4 Q. How about Joe Preston?

5 A. He is or was a State
6 Representative.

7 Q. Were they mentioned in any of
8 this FBI investigation?

9 A. Someone mentioned Bodack in
10 the taped interview or the consensual
11 interview interception.

12 Q. Now ---.

13 A. In fact, I think it was the CI
14 that mentioned Bodack.

15 Q. Okay. Well, do State Senators
16 and State Representatives vote on
17 matters of importance to the Governor
18 of the State of Pennsylvania from
19 time to time? Little things like
20 appropriations and stuff like that?

21 A. There is an appropriations
22 committee that votes on supporting
23 appropriations, yes.

24 Q. For the Pennsylvania State
25 Police?

1 A. Yes.

2 Q. Now, Rick says to you when you
3 talked to him on May 20th, I think
4 your quote was that he pleads
5 ignorance; right?

6 A. I think that's the quote, got
7 to plead ignorance.

8 Q. Not to plead ignorance. Out
9 of where? Which office?

10 A. (Inaudible response).

11 Q. Did you ask Rick to go back
12 and check on these matters?

13 A. I think he told me and I'm
14 going to have to look at my notes. I
15 don't know whether I asked him or
16 whether he said I'd have to get back
17 to you.

18 Q. Well, did he get back to you?

19 A. Yes, he did.

20 Q. What did he say when he got
21 back to you?

22 A. I would have to look at the
23 notes.

24 Q. Well, tell us as you recollect
25 today. This is a very important

1 matter. Tell us if you know.

2 A. He does not cite any high-
3 ranking officials in the state police
4 or the Governor's Office.

5 Q. He doesn't cite any?

6 A. I'd have to look at my notes
7 to see what ---.

8 Q. I'm talking about your
9 recollection now.

10 A. Okay.

11 Q. I don't want you to look at
12 your notes. I want to ask you your
13 recollection as you sit here today.
14 If you don't remember and you don't
15 know, that's fine. We'll go to the
16 notes at some point if you want to
17 later. Right now the answer is no.
18 I'd like to just check your
19 recollection.

20 A. Then I'm saying I do not
21 remember ---

22 Q. Okay.

23 A. --- our conversation when he
24 called back later that day.

25 Q. So you don't remember what

1 Rick said when he called back later
2 the 12th as you sit here today?

3 A. If I were to refresh my memory
4 with my notes I'm sure I would
5 remember.

6 Q. Well, did you make notes when
7 Mr. Hikus and Mr. Ober came in the
8 room and sat down with you?

9 A. No, I did not.

10 Q. As a matter of fact, after
11 that meeting you at one point asked
12 Colonel Coury to come back to you and
13 to make notes about what happened in
14 that meeting; right?

15 A. I paged Colonel Coury and
16 asked him to come back to the
17 academy.

18 Q. Yes.

19 A. I asked him to come in because
20 this involved him and we asked
21 Colonel Coury to listen to what
22 Lieutenant Colonel Hikus had just
23 told me.

24 Q. Captain Ober wasn't there; was
25 he?

1 A. No, he was not.

2 Q. And that was on the 12th; was
3 it?

4 A. Yes, it was.

5 Q. Do you remember whether Rick
6 got back to you the 12th or the 13th?
7 I'm sorry. The 20th or after the
8 20th of May? Did he get back to you?
9 You initially spoke to Rick on the
10 20th of May; correct?

11 A. Yes, sir.

12 Q. Okay. Did he get back to you
13 after that, after the 20th or was it
14 that day?

15 A. It was on the 20th.

16 Q. Now, who was in the room with
17 him, sir?

18 A. I do not know.

19 Q. Were you on a speakerphone?

20 A. Not that I know of.

21 Q. Did he ever indicate whether
22 he had met with Mr. Cush and Mr.
23 Suhy?

24 A. I drew the conclusion that he
25 had talked to Cush, but I don't know

1 if that is an accurate conclusion.

2 Q. Well, did he tell you anything
3 about the history of this
4 investigation?

5 A. I think that he talked about
6 the case involving a municipality
7 testing. Again, I'd have to look at
8 my notes.

9 Q. Well, do you have a
10 recollection of whether he indicated
11 that he had recorded any parts of
12 this --- and strike that.

13 Do you have a recollection of
14 whether the FBI agents had reported
15 anything about this investigation to
16 the Pennsylvania State Police before
17 going to Captain Ober?

18 A. Yes, without question he did
19 say that this was an older
20 investigation.

21 Q. An older investigation?

22 A. Yes.

23 Q. Why didn't you know about it,
24 Colonel?

25 A. Because apparently it did not

1 involve higher-ranking officials in
2 the state police.

3 Q. Oh, I see. I'm sorry. Now,
4 I'm beginning to understand. It
5 involved Pennsylvania State
6 Policemen, but it didn't involve
7 higher-ranking Pennsylvania State
8 Policemen. So the FBI wouldn't tell
9 you about those; right?

10 A. No. They don't have to tell
11 me about a regular investigation on a
12 trooper, no. But I would expect them
13 to do so if it's into the higher
14 ranks.

15 Q. Well, they don't have to tell
16 you about anything; do they?

17 A. They don't have responsibility
18 to do anything beyond the statutes.

19 Q. Sure. And if you found an FBI
20 agent doing something wrong and
21 violating a state law and your people
22 were out there investigating them,
23 you wouldn't have any duty to tell
24 them; would you?

25 A. I think the troop commander or

1 the bureau director would tell the
2 SAC that.

3 Q. So your people could go tell
4 the FBI about an investigation into
5 them without checking with you first?

6 A. Say it again.

7 Q. Sure. The Pennsylvania State
8 Troopers are out there, they're doing
9 an investigation, they find somebody,
10 some FBI personnel is involved, they
11 don't have to come to you, they can
12 go right to the FBI?

13 A. That is correct.

14 Q. Oh, okay. Well, would you
15 expect them to exercise some
16 restraint about notifying targets or
17 potential targets of an
18 investigation?

19 A. Would I expect an investigator
20 not to talk to an identified target?

21 Q. Sure.

22 A. Yes, that would be my
23 expectation.

24 Q. Not to tip them off?

25 A. Not to talk to an identified

1 target?

2 Q. Right.

3 A. Yes.

4 Q. Unless there was some reason
5 or some advantage to be gained from
6 it of course. But normally the
7 procedure would be not to tip
8 somebody off if they're being
9 investigated; right?

10 A. If you have an identified
11 target I would not expect that you
12 would tell that target.

13 Q. Okay. How about an
14 unidentified target like a member of
15 a group?

16 A. Give me an example.

17 Q. Sure. Lieutenant colonels in
18 the Pennsylvania State Police.

19 A. Then I would expect the
20 special agent in charge to come
21 directly to me or call me directly.

22 Q. But the special agent in
23 charge told you he didn't know, sir.
24 You just told us that. You talked to
25 him on May 20th and, Colonel, he told

1 you I have to plead ignorance, I
2 don't know about this.

3 A. It's also my understanding
4 that Cush is saying that he never
5 remembers mentioning or didn't
6 mention any high-ranking officials
7 within the state police and/or the
8 Governor's Office.

9 Q. Yes, Agent Cush. You were
10 here during Colonel Coury's
11 deposition; right?

12 A. I did sit in on Colonel
13 Coury's, yes.

14 Q. Did he express some kind of
15 concern about FBI, not that they
16 would ever do anything intentionally,
17 unpolitical as they are, he never ---
18 he said he had a concern, I thought.
19 I thought he testified that sometimes
20 he had some concern with leaking
21 information from the FBI; do you
22 recollect?

23 A. I believe he said ---.

24 Q. Do you have that feeling or
25 concern?

1 BRIEF INTERRUPTION

2 BY ATTORNEY BAILEY:

3 Q. Do you have a concern about
4 that?

5 A. I don't have a concern that
6 the FBI would intentionally leak
7 information, no.

8 Q. Okay. Now, did Mr. Cush ever
9 indicate that even though he has no
10 recollection of discussing
11 confidentiality with Captain Ober,
12 that he would expect him to keep the
13 information confidential?

14 A. I think the words were
15 discretion.

16 Q. Okay. All right. And did he
17 indicate that he would expect, he
18 would just normally trust the captain
19 in the Pennsylvania State Police to
20 exercise, let's say, use the word
21 discretion as you used, discretion in
22 how you share information; right?

23 A. I think that's generally
24 accurate.

25 Q. Okay. Well, does that go for

1 an agent in the FBI?

2 A. What do you mean?

3 Q. Is that something that you
4 would expect of qualified law
5 enforcement personnel of any rank?

6 A. To exercise discretion on an
7 investigation?

8 Q. On notifying people of where
9 an investigation goes?

10 A. You lost me.

11 Q. Well, Colonel Hikus had
12 indicated and to me it seems rather
13 basic, of course, but I apologize for
14 my question not being clear. That,
15 you know, you're doing an
16 investigation, you try to keep the
17 information as limited to as few
18 people as possible, because people
19 talk; correct?

20 A. That's basically correct.

21 Q. Did you ever find out why Cush
22 didn't tell Rick?

23 A. Because there was no
24 investigation into higher-ranking
25 officials in the state police.

1 Q. But there was information to
2 indicate that there might be
3 problems; correct?

4 A. I don't know what
5 interpretation he made of the
6 statement from Bridges that someone
7 would have to go to a lieutenant
8 colonel or someone affiliated with
9 the state police.

10 Q. Well, you now know about
11 Bridges. What did, again, what did
12 Ober know about Bridges then? What
13 did Cush know about Bridges then?

14 A. What Lieutenant Colonel Hikus
15 and Captain Ober told me as it
16 related to Bridges or Stanton was
17 that the FBI agent on this phone call
18 in May or early September or early
19 October, told them that they had a
20 confidential informant who knew a
21 trooper by the name of Stanton. The
22 informant told the agent that Stanton
23 allegedly told him that he could get
24 people into the state police academy.
25 He told the informant that he could

1 get them reclassified from an
2 ineligible status, that an eligible
3 status had been made, he could get
4 them through the polygraph
5 examination, that he could get them
6 through the background examination,
7 the physical fitness testing, and I
8 think the psychological examination
9 and that finally he could get them
10 appointed to the academy.

11 Q. You've done a great job of
12 reviewing all of this, but you don't
13 remember your discussions with Rick.
14 You have to --- you need your notes
15 to do that?

16 A. Yes, I would.

17 Q. I applaud in the information
18 you have about the rest of this, but,
19 you know, as far as that tape is
20 concerned, do you have any
21 information known to you to indicate
22 that Mr. Ober would know Bridges or
23 the extent of Bridges' knowledge in
24 October of '98?

25 A. After October 21st he would

1 have.

2 Q. Well, what would he have known
3 about Bridges after October 21st
4 other than what was in this tape?

5 A. Nothing.

6 Q. Well, what about before that?
7 Any information that you have that
8 would indicate that Mr. Ober had
9 information about Bridges before
10 that?

11 A. I don't think Bridges' name
12 was mentioned to me at all.

13 Q. Oh, okay. Well, what about
14 Cush? What have you learned about
15 Cush's knowledge of Bridges and
16 Bridges' role?

17 A. I don't remember.

18 Q. And didn't --- Mr. Cush also
19 said he had some difficulty hearing
20 that word lieutenant colonel; didn't
21 he?

22 A. I don't recall that, no.

23 Q. And that, in fact, do you know
24 whether he testified that Mr. Ober
25 pointed out the word lieutenant

1 colonel. Here is this FBI agent
2 sitting here talking about this
3 source. In fact, he remembered
4 talking to Mr. Williams, the word
5 eyeball, eyeballing somebody, but he
6 didn't remember when he went up in
7 October to talk to Captain Ober what
8 this --- he couldn't hear this term
9 lieutenant colonel, and Captain Ober
10 was the one who picked it out. Did
11 you ever find anything out about
12 that?

13 A. No, I didn't.

14 Q. Do you remember whether Rick
15 had ever indicated that Ober had
16 expressed concern about where to take
17 the information?

18 A. I know that he expressed that
19 concern to Lieutenant Colonel Hikus.

20 Q. Do you know whether he ever
21 expressed that concern to Mr. Cush?

22 A. I'm not sure.

23 Q. But isn't that a very key
24 issue here? If we're looking at the
25 credibility, sir, of Mr. Cush and Mr.

1 Ober and you're checking the facts
2 about what happened in October of
3 1998, wouldn't reflections of Mr.
4 Ober or comments by Mr. Ober having
5 to do with a concern about where he
6 takes information, wouldn't that be
7 of importance?

8 A. It was of importance to me as
9 to whether or not the FBI had
10 directed confidentiality in this
11 case. I would want to know that and
12 take that into consideration.

13 Q. Well, would you think the FBI
14 would want to know that and take that
15 into consideration? Hold on a
16 second. Colonel, let me go over this
17 again and clarify it, okay? Do you
18 know whether Captain Ober expressed a
19 concern to the FBI about where he
20 should take this information?

21 A. I don't know if he expressed
22 concern to the FBI. I know he
23 expressed concern to Lieutenant
24 Colonel Hikus.

25 Q. Yes, and Colonel Hikus told

1 him to be quiet and just report to me
2 and cooperate with them and just
3 report to me; right?

4 A. That is correct.

5 Q. So your primary
6 dissatisfaction, if we can term it
7 that, with Captain Ober was the fact
8 that he didn't go to Conley, that
9 instead he went to Hikus; right?

10 A. Yes, I was concerned about
11 that.

12 Q. Okay. You know, you're not
13 --- you don't have any concern with
14 Captain Ober following the orders of
15 Colonel Hikus? I mean, Colonel Hikus
16 gave him a lawful order, you do X and
17 Y and Captain Ober followed those
18 orders; right?

19 A. I --- he did follow those
20 orders, and I have no problem with
21 him following those. In fact, that
22 would be my expectation, and I think
23 that was a mitigating factor as it
24 related to Captain Ober's following
25 those.

1 Q. A mitigating factor is that
2 violating his chain of command. Are
3 you saying he violated his chain of
4 command? Is that what you're saying?

5 A. He violated rule 1.17. My
6 primary concern was Lieutenant
7 Colonel Hikus.

8 Q. I must say, sir, I reached
9 that conclusion a long time ago in
10 this matter. And we'll come to that.
11 But I did review your notes and I
12 thought something was mentioned
13 there, over-concerned about going
14 anywhere with info. And I thought
15 that was, those were notes that you
16 made in your conversation with Rick.

17 A. That's correct.

18 Q. Well, what do you mean?
19 What'd you write down there? What's
20 that about?

21 ATTORNEY CHRISTIE:

22 Counsel --- sorry.

23 ATTORNEY GUIDO:

24 It's improper to
25 question him without showing

1 him the document and letting
2 him put that sentence in the
3 context of his own notes.
4 It's improper to do that and I
5 object.

6 BY ATTORNEY BAILEY:

7 Q. What do you remember Rick
8 saying about Ober's comments
9 regarding information and what to do
10 with it?

11 A. The statement that you just
12 read to me from my note, I think what
13 he meant was that he expressed some
14 concern to the agent about who he
15 should go to with this.

16 Q. Well, did that beg a question
17 to you about whether or not there had
18 been a discussion of confidentiality
19 between Cush and Ober?

20 A. I think there was an
21 acknowledgement that there was a
22 discussion with the use of
23 discretion.

24 Q. And who acknowledged that,
25 sir? Rick; didn't he?

1 A. Captain Ober and Lieutenant
2 Colonel Hikus.

3 Q. There wasn't an
4 acknowledgement by the FBI of that?

5 A. According to my notes that
6 must have been something I discussed
7 with the SAC as well.

8 Q. And the SAC, Mr. Mascara,
9 Rick, your friend, told you that Ober
10 had expressed concern about what to
11 do with the information.

12 A. That would be correct.

13 Q. Colonel Evanko, thank you.
14 Now, did Mr. --- I'm sorry, sir.

15 A. I would put that into context
16 as to what he got from whoever he
17 talked to.

18 Q. Okay. Sure. I mean, that
19 would naturally or those comments or
20 the FBI awareness of Mr. Ober's
21 thoughts would have to exist in a
22 context of whatever passed between
23 Mr. Ober and the FBI agent; right?

24 A. Yes.

25 Q. That's what you're saying;

1 right?

2 A. Yes.

3 Q. Okay. And I'm not --- I'll
4 be, you know, very foolish to
5 disagree with you on that. I mean,
6 that's only common sense. But you in
7 trying to learn, I mean, your
8 justification, and we're going to
9 talk about your investigation in just
10 a moment, but your justification for
11 the investigation has always been
12 termed by the Defendants and by
13 yourself today as into the facts and
14 circumstances surrounding this FBI
15 inquiry; right, sir?

16 A. Surrounding the whole event.

17 Q. Surrounding the whole event;
18 right?

19 A. Yes.

20 Q. And I asked you questions
21 about who you believed or what you
22 felt that Captain Ober had done wrong
23 and I think you were, you say you
24 just never reached a conclusion about
25 that. In fairness to you I think

1 that's what you testified to; right?

2 A. I think I testified that it
3 was a --- if I were to look for a
4 violation or identify a violation it
5 would have been a violation of the
6 practice of the department, as well
7 as a violation of reporting to your
8 supervisor an individual who has
9 violated rules and regulations.

10 Q. Well, you said that Ober
11 violated rule 1.17. Now, what's that
12 rule?

13 A. Reporting information to your
14 supervisor.

15 Q. There's an affirmative duty on
16 the part of an investigator to report
17 to a supervisor an FBI inquiry?

18 A. If it involves an allegation
19 of a violation of the rules and
20 regulations or law.

21 Q. Yes. Okay. Fair enough.
22 Now, you told me that when you talked
23 to Rick, Rick talked about how old
24 this investigation was; right?

25 A. Yes.

1 Q. Did Rick ever use the year or
2 mention the year 1997?

3 A. I believe that he did.

4 Q. And you heard Colonel Coury's
5 deposition; right?

6 A. Yes, I did.

7 Q. Did you hear Colonel Coury
8 testify that he got a call from
9 Captain Monico (phonetic) about
10 Stanton's activities?

11 A. I don't recall hearing that,
12 no.

13 Q. You don't recall hearing that?

14 A. No, sir.

15 Q. Well, do you know whether Mr.
16 Coury did get any information from,
17 is it Berrings (phonetic)?

18 A. Not that I know of.

19 Q. And Monico, you don't know
20 whether they ever told Mr. Coury
21 anything about the previous
22 investigation?

23 A. I don't recall Colonel Coury
24 testifying to that nor do I know
25 about it.

1 Q. Well, didn't Rick tell you
2 that they had told IAD --- I'm sorry,
3 sir.

4 A. Go ahead.

5 Q. No, no, go ahead.

6 A. I lost it, go ahead.

7 Q. When you talked to Rick didn't
8 he tell you that this investigation
9 had been around and they went back
10 into it for some reason?

11 A. I think he did tell me that.

12 Q. Yes. And did he ever indicate
13 that they had told the state police
14 and nothing was done?

15 A. Not that I recall, no.

16 Q. Well, do you know whether Mr.
17 Cush had indicated that he, in fact,
18 went to the western division IAD and
19 told him about Stanton before?

20 A. I think Agent Cush had gone to
21 Sergeant Berrings and told him or he
22 asked him to check to see if Trooper
23 Stanton was doing any undercover work
24 into a job selling cadets for
25 appointment to the Academy.

1 Q. Now, did you know whether the
2 organized crime division of western
3 Pennsylvania was ever notified?

4 A. I don't know.

5 Q. Well, Rick had indicated to
6 you, did he not, that there had been
7 at least some inquiry to the
8 Pennsylvania State Police prior to
9 ever going to Captain Ober in October
10 of '98; didn't he? He told you that.

11 A. He may have, but I know that
12 Cush in his statement said that.

13 Q. Yes. Well, why didn't you
14 have that investigated, sir?

15 A. By the time that I read this
16 entire report it was being
17 investigated administratively and
18 criminally.

19 Q. Did you assign a couple of
20 majors to it to check out whether
21 Monico, Frank, what he was doing?

22 A. I'm not sure that I knew
23 anything about Monico, but it was a
24 regular criminal investigation and
25 administrative investigation.

1 Q. Well, why wouldn't that
2 scenario deserve as much
3 investigation as the facts and
4 circumstances surrounding the 1998,
5 the October 1998, incident?

6 A. I would think that the
7 investigation into the criminal
8 conduct of Stanton was substantially
9 more than the administrative inquiry
10 into the facts and circumstances of
11 this incident.

12 Q. Sir, aren't they two different
13 things?

14 A. Yes, they are.

15 Q. Sure, and the issue that you
16 have told us and your Codefendants
17 have told us time and time again was
18 that you were looking at the facts
19 and circumstances about what occurred
20 in October of '98, not because Ober
21 or Hikus are criminals or anything
22 like that, you wanted to find out
23 what happened in these circumstances
24 as the Commissioner of the
25 Pennsylvania State Police; right?

1 A. That was right.

2 Q. Well, why didn't you do the
3 same thing in regards to what the
4 breakdown was in '97?

5 A. Because by the time I found
6 that out by reading the entire
7 administrative inquiry there was
8 already an ongoing criminal and
9 administrative investigation into
10 Stanton.

11 Q. Okay. Well, the criminal
12 investigation into Stanton, those
13 standards in a criminal investigation
14 are separate from the kind of
15 interdepartmentally or disciplinary
16 investigations or administrative
17 investigations that you claim were
18 the basis for checking into the
19 events of October '98; right? I
20 mean, they're two different things?

21 A. A criminal investigation is
22 different from an internal affairs
23 investigation, yes.

24 Q. Sure. And the administrative
25 investigation that you're referring

1 to into Mr. Stanton is like a BPR
2 that you're going to do into the
3 conduct or allegations of misconduct
4 of a trooper or an officer in a
5 normal circumstance; right?

6 A. That is correct.

7 Q. Sure it is. But you have
8 never initiated an investigation into
9 the facts and circumstances
10 surrounding FBI reports as early as
11 '96 or '97 to your personnel in
12 western Pennsylvania and how that was
13 handled in communicating information
14 of great importance to the
15 Pennsylvania State Police. You never
16 really have done the same type of
17 investigation there that you have
18 done in the case involving October of
19 '98 and the incidents relating to Mr.
20 Hikus and Mr. Ober have you?

21 A. There was an ongoing --- by
22 the time I read the reports, there
23 was an ongoing criminal investigation
24 into the Stanton matter as well as an
25 administrative investigation.

ATTORNEY BAILEY:

Object to the question
as non-responsive to the
respect --- object to the
response as non-responsive.

BY ATTORNEY BAILEY:

Q. Colonel, will you take a look
at these, please. These are your
notes.

ATTORNEY BAILEY:

Let the record show
it's two pages. We're going
to have them marked as Number
Two.

(Deposition Exhibit Two
marked for
identification.)

BY ATTORNEY BAILEY:

Q. Do you have it in front of
you, sir?

A. Yes, I do.

Q. The top of the page, does that
say Rick Mascara and then a phone
number, Pittsburgh SAC, May 20, '99
and then your pager number?

1 A. Yes, sir.

2 Q. Now, sir, I confess that I've
3 tried my best to decipher your notes
4 and I've been able to read a good bit
5 of it, but I need a little bit of
6 help; okay? So I need you to help me
7 with a few things; all right? The
8 first sentence, if I understand it,
9 says I was, can you read that
10 sentence for me? I was advised by,
11 I'm going to try to read it and you
12 correct me if I get it wrong, it will
13 go a little faster. I was advised by
14 Lieutenant Colonel Hikus recently
15 that we (PSP) were the subject of an
16 FBI investigation into selling
17 trooper positions. Is that what it
18 says?

19 A. Yes, it does. That's partially
20 what it says.

21 Q. All right. Now, I have a ---
22 there's a parentheses here and I
23 cannot read, all I can read is the
24 word corruption. Can you read the
25 rest of that?

1 A. Parentheses, for any other
2 corruption allegation, end
3 parentheses, since October '98, end
4 parentheses.

5 Q. All right. Sir, here's my
6 question on that particular. These
7 are some paraphrases of notes of the
8 things that you said to Rick; right?

9 A. Yes, sir.

10 Q. What did you mean by any other
11 corruption allegation since October
12 '98?

13 A. Into the higher ranks of the
14 state police.

15 Q. You're asking the FBI agent to
16 tell you whether there are any
17 pending investigations into higher-
18 ups in the Pennsylvania State Police;
19 aren't you? Isn't that what you're
20 doing there?

21 A. I think I was doing that in
22 the context of since October '98
23 with the ---

24 Q. Yes.

25 A. --- with the preface when I

1 talked to the SAC, I think that I
2 asked him or made a statement, if
3 this is going to interfere with an
4 FBI investigation, just don't talk to
5 me or something like that.

6 Q. Well, what are you asking him
7 for? I mean, what --- why are you
8 asking him? Why are you asking the
9 Federal Bureau of Investigation if
10 there are --- do I have anything to
11 fear? Is that what you're asking
12 him, sir?

13 A. No.

14 Q. Then why are you doing this?
15 Is that proper to do this?

16 A. Why am I asking if there is
17 any other corruption investigation?

18 Q. Yes, sure. Yes, sir. Would
19 you expect him to tell you?

20 A. Yes, I would unless they had
21 strong probable cause to think that I
22 was involved in it.

23 Q. All right.

24 A. Yes, I would expect them to
25 tell me.

1 Q. Okay, sir. Colonel Evanko,
2 how long have you been a law
3 enforcement officer?

4 A. As of today?

5 Q. Yes.

6 A. Just about 32 years.

7 Q. All right. Sir, you've used
8 the term a couple of times unless
9 there's good probable cause.
10 Remember?

11 A. Yes.

12 Q. Now, I know legally what the
13 definition of probable cause is, at
14 least I try. I know it's a judgment
15 call thing, you know, it's sort of
16 like pass defense in football
17 sometimes, you weigh things and
18 whatnot. Well, what do you mean when
19 you say to me that your expectation
20 is unless there is good probable
21 cause you should be told? Okay.
22 Unless there's good probable cause.
23 What does that mean?

24 A. I'm not sure I can explain it
25 any better other than the --- I would

1 expect that the SAC, if they had, for
2 example, a wire intercept of me
3 talking to somebody in an illegal
4 fashion, that that would be strong
5 probable cause and obviously I'm
6 involved in something.

7 Q. Okay. So that would be the
8 kind of probable cause that would
9 implicate you personally?

10 A. Yes, sir.

11 Q. Okay. And you believe that if
12 an FBI agent is sitting there with
13 some reason to believe that maybe a
14 group of people at the top, somebody
15 at the top, okay, is maybe doing
16 something wrong, that's not good
17 probable cause, so they should tell
18 you; right? Is that what you're
19 telling me?

20 A. It's my understanding that the
21 FBI agent is saying that high-ranking
22 individuals in the state police were
23 never mentioned.

24 Q. Well, that's like Monday
25 morning quarterbacking though; isn't

1 it?

2 A. I think it's the facts.

3 Q. Known after the investigation
4 is completed; right?

5 A. We established that or it was
6 established in the record after the
7 investigation was completed.

8 Q. Well, further on your notes
9 you've already told us that there was
10 this concern that Ober had about who
11 he should share this information
12 with; right?

13 A. Point that out to me.

14 Q. Second page, sir, second page.
15 No, no, second page, sir, you have it
16 in your right hand. Yes, sir. Right
17 hand, okay. I want to go through the
18 lines with you now; okay? The first
19 line has the number 1237. Do you see
20 that?

21 A. Yes, sir.

22 Q. That's one. Count with me.
23 One, two, three, four, five, and we
24 have a blank line and then we have
25 CI. Do you see that?

1 A. Yes, sir.

2 Q. That's six and then we have a
3 blank line and that's seven. Then we
4 have eight and nine and it says, all
5 I can read is nothing happened, dash.
6 Now, do you want to read your
7 handwriting for me, because maybe I
8 misread it?

9 A. Ober concerned about going
10 anywhere w/information.

11 Q. Okay. That's what you wanted
12 me to show to you. I showed it to
13 you. All right, sir. Now, let's go
14 back to page one; okay? All right.
15 Now, if you get into an investigation
16 and start an investigation, and the
17 investigation indicates that there's
18 a possibility, not good probable
19 cause, and I think you and I can
20 understand the basic definition of
21 what good probable cause means. Good
22 probable cause means it would be a
23 good basis to bring a charge; right?

24 A. Or to conduct an
25 investigation.

1 Q. Okay. Fair enough. Or to
2 conduct an investigation. I would
3 think the threshold to conduct an
4 investigation, particularly in public
5 corruption cases, was pretty low,
6 particularly when it comes to
7 democrats with the FBI. But that
8 aside, let's say we're talking about
9 a very, very, very low level. What
10 would that level be to conduct an
11 investigation?

12 A. Why would the FBI conduct an
13 investigation you mean?

14 Q. Sure.

15 A. To get information that they
16 need to see whether or not there's
17 wrongdoing.

18 Q. I agree with you, sir. Right
19 now, if we go back in our minds' eye
20 prior to October 1998, we know that
21 Len Bodack, a State Senator, had been
22 mentioned. You agree that Bodack was
23 mentioned in the earlier
24 investigation phase prior to '97?

25 A. No, the first that I know of

1 Bodack's name being mentioned by the
2 FBI's --- by the FBI's confidential
3 informant, was the intercept
4 disclosed to Captain Ober on October
5 21st.

6 Q. Well, if there were evidence
7 that would indicate that the FBI knew
8 about Bodack and his name had been
9 mentioned earlier than October of
10 '98, would it change any of your
11 feelings about this?

12 A. In regards to what?

13 Q. Whether or not the FBI would
14 have indicated to Mr. Ober a la Ober
15 being concerned about where he goes
16 with the information before October
17 of 1998.

18 A. You lost me. I don't know
19 what you mean by the question.

20 Q. You're telling us that when
21 you're looking at the --- in your
22 review of the information, that Mr.
23 Bodack wasn't mentioned before
24 October of '98 or the FBI didn't know
25 about him before October of '98;

1 right?

2 A. That's the only time that I'm
3 aware of.

4 Q. Okay. I asked you if the FBI
5 did mention Mr. Bodack and was aware
6 of Mr. Bodack before October of '98
7 if that would change anything for
8 you?

9 A. And I don't know what you mean
10 by the question.

11 Q. Well, if the FBI had suspected
12 Mr. Bodack were involved before
13 October of '98 would that have
14 affected their probable cause to
15 investigate at all?

16 A. To investigate Bodack, I don't
17 care who they investigate.

18 Q. Well, if Bodack had indicated
19 that he was getting things out of the
20 Governor's Office as Mr. Gigliatti
21 did, for example, do you think that
22 should have affected the FBI's
23 approach to this investigation?

24 A. In regards to who they told
25 or ---?

1 Q. Sure. Who Bodack was
2 contacting, who he may have been
3 trading votes for influence with.

4 A. I have no idea.

5 Q. Well, did Mr. Williams or Mr.
6 Wertz (phonetic) check that out? Do
7 you know if they did?

8 A. Checked Bodack?

9 Q. Yes, the pre-October '98
10 aspect of this thing.

11 A. It's my understanding that
12 when the FBI advised Captain Ober of
13 this case that it was unfounded,
14 there was nothing to it except,
15 quote, a bad trooper. And that the
16 case was over.

17 Q. The case was over when the FBI
18 contacted Ober?

19 A. Yes.

20 Q. Okay.

21 A. And that's late September,
22 early October of 1998 or --- no, it's
23 two weeks prior to May 12th that
24 Lieutenant Colonel Hikus told me
25 Captain Ober told him that the FBI

1 had called and told him that the
2 investigation was over or unfounded
3 and that the most they could find was
4 that we had a bad trooper or
5 something like that.

6 Q. Okay. Let's clarify this in
7 fairness to you. You misspoke or
8 maybe I misunderstood you. The FBI
9 had not closed the case in October of
10 '98. That actually occurred later.
11 It was a live investigation until
12 about two weeks before you were told
13 in May; right?

14 A. That's correct.

15 Q. That's what you meant to say?

16 A. That's what I said.

17 Q. Yes. Okay. Well, I
18 misunderstood you.

19 A. That's what I said in the
20 second part of that.

21 Q. Yes. I think you cleared it
22 up. You cleared it up. There was
23 some confusion there. That's fine.
24 It's okay. Now, let's go back to
25 this document here. And go back to

1 page one. These are your notes and
2 it's Evanko Two. Now, it says, after
3 that first little paragraph there, it
4 says, ASAC. Is that what it says,
5 ASAC agent? What does that ---?

6 A. Assistant special agent in
7 charge.

8 Q. And what's the name?

9 A. I can't read it.

10 Q. One and a half years is all I
11 can make out. Is that --- do you
12 agree that that's what it says?

13 A. There is a word before that
14 and then after the one and a half
15 years it appears to say Phoenix
16 Division.

17 Q. What's that mean?

18 A. I don't know.

19 Q. Well, is that something the
20 FBI is saying to you or something
21 you're saying to the FBI?

22 A. I don't recall anything about
23 that.

24 Q. It sounds pretty exotic to me,
25 but who knows how important Stanton

1 is. Phoenix Division. Now, then
2 there's 1200. What's the
3 significance of the number 1200?

4 A. I think that was the time that
5 I called.

6 Q. And then it says out of where,
7 which office. Who's saying that?
8 That's Mascara asking you where this
9 is coming from. He didn't know
10 anything about it; right?

11 A. When I posed the question to
12 him about an investigation into
13 higher-ups of the state police, and
14 he's saying, out of what office, out
15 of where, which office?

16 Q. Do you remember what you said
17 to him to spark that response, what
18 you may have said, what words you
19 used?

20 A. I would have asked about any
21 investigation, any corruption
22 investigation, probably in the state
23 police or into the higher ranks of
24 the state police. That's probably
25 what that means.

1 Q. And then the next line is got
2 to plead ignorance?

3 A. Yes.

4 Q. In other words, he didn't know
5 about what you're --- he didn't know
6 what you were talking about?

7 A. Yes.

8 Q. Okay. The third line, I'm
9 sorry, I can't read that. I see the
10 word seems and the word to.

11 A. Sometime ago seems to
12 remember.

13 Q. Okay. Then what?

14 A. And the next line is was a
15 case against a specific trooper.

16 Q. Okay. So he seemed to
17 remember something about a case
18 against a specific trooper.

19 A. Yes, sir.

20 Q. So again, if there were
21 indications that Mr. Bodack, let's
22 say, had been involved or had come
23 up, prior to October '98, that would
24 be news to you at this juncture here;
25 right? And Rick didn't seem to

1 indicate that during this May 20th
2 conversation; is that correct?

3 A. That I would not have had any
4 knowledge about the name Bodack, I
5 wouldn't have had that until after I
6 reviewed the administrative inquiry
7 and read that in the transcript of
8 the recording that was made in
9 October.

10 Q. Okay. Now, what's that next
11 line?

12 A. I don't know what the first
13 word is, but it appears to be after
14 that w/David.

15 Q. Who's David?

16 A. I don't recall.

17 Q. Young?

18 A. I don't know who it is.

19 Q. They're your notes. You don't
20 know who David is?

21 A. No, I don't know what that
22 means.

23 Q. You see there's a little
24 squiggly line there?

25 A. Yes, I do.

1 Q. What's underneath that?

2 A. I probably started to write
3 something and stopped and crossed it
4 off.

5 Q. All right. Go down to
6 paragraph two. There's a number two;
7 right?

8 A. Yes, sir.

9 Q. As I read that it says, was I,
10 then there's --- is that the word a?

11 A. A.

12 Q. Subject of an investigation or
13 any of lieutenant colonels. Do you
14 remember that?

15 A. Yes.

16 Q. Do you see that? Now, I
17 might be mistaken, but did Mr. Hikus
18 tell you that there was a possibility
19 of a lieutenant colonel or a colonel?
20 Do you remember?

21 A. Lieutenant Colonel Hikus on
22 May 3rd told me that the, quote,
23 term, end quote, colonel was used.

24 Q. Where'd you get lieutenant
25 colonel by the 20th? Who did you

1 talk to and what did you learn by
2 then that caused you specifically to
3 ask Rick, L, right there, L. colonel
4 as opposed to colonel then. Where'd
5 you get that?

6 A. I'm thinking from what
7 Lieutenant Colonel Hikus and Captain
8 Ober told me that two high-ranking
9 officials, in high ranking there are
10 two potentially lieutenant colonels.

11 Q. Because you're a colonel, it
12 wouldn't include you; right?

13 A. I didn't know that ---.

14 Q. There's only one colonel. I'm
15 sorry. There's only one colonel.

16 A. And your question is?

17 Q. That colonel, it wouldn't have
18 included you. You knew that you
19 hadn't been involved in this thing;
20 right?

21 A. I knew I wasn't involved, yes.

22 Q. Okay.

23 ATTORNEY BAILEY:

24 Let me know a minute
25 warning.

1 BY ATTORNEY BAILEY:

2 Q. Okay. So sir, as you sit here
3 today, your best recollection is that
4 you think that came from Mr. Hikus or
5 conversations with Mr. Hikus?

6 A. The use of the term colonel?

7 Q. Yes, I'm just looking at ---.

8 A. I know it came from Lieutenant
9 Colonel Hikus on the 13th --- May
10 12th.

11 Q. Okay. So on May 13th Colonel
12 Hikus had told you that it was the
13 term lieutenant colonel?

14 A. No ---.

15 Q. Go ahead.

16 A. On May 12th when they briefed
17 me there was no discussion at all
18 about a rank.

19 Q. Okay.

20 A. It struck me as odd on May
21 13th that he would come to me and say
22 the term, not the rank, but the term
23 colonel was used.

24 Q. Okay. Now, he gave a
25 statement, Mr. Hikus did.

1 VIDEOGRAPHER:

2 Excuse me, Mr. Bailey,
3 may we suspend for a moment?

4 ATTORNEY BAILEY:

5 Yes.

6 VIDEOGRAPHER:

7 It's now 11:30, March
8 27th, 2002. We are going to
9 suspend and change tapes on
10 the deposition of Mr. Evanko.

11 SHORT BREAK TAKEN

12 MR. SOLOMON:

13 It's 11:36 a.m., tape
14 two, back on the record.

15 VIDEOGRAPHER:

16 The time is 11:38 a.m.,
17 March 27th, 2002. We are
18 getting the second tape of Mr.
19 Evanko.

20 BY ATTORNEY BAILEY:

21 Q. Mr. Evanko, did you hold up
22 the criminal investigation into Mr.
23 Stanton until you investigated the
24 facts and circumstances? I mean,
25 that's the way you term it and

1 actually we look at it differently.
2 There's an honest difference of
3 opinion there. But the facts and
4 circumstances of the October 5th, '98
5 FBI inquiry. Do you understand that
6 question?

7 A. I believe I understand it. By
8 the time I got the administrative
9 inquiry, the investigation both
10 criminally and administratively into
11 Stanton was ongoing. But no, I did
12 not order ---.

13 Q. But you say the --- you're
14 talking about the results of your
15 investigation into Mr. Ober.

16 A. The results of my
17 administrative inquiry about the
18 incident with Lieutenant Colonel
19 Hikus and Captain Ober and the FBI.

20 Q. Okay. So your testimony is
21 you didn't hold anything up and that
22 the criminal investigation into Mr.
23 Stanton and the administrative
24 investigation into Mr. Stanton
25 proceeded on a normal basis and a

1 normal schedule? That's what you're
2 telling us; right?

3 A. Yes, sir.

4 Q. At least as known to you?

5 A. Yes, sir.

6 Q. Okay. Can we go back to
7 Evanko Two? Now, I had been asking
8 you about this term lieutenant
9 colonel. Do you see that there?

10 A. Yes, sir.

11 Q. Now, in response to earlier
12 questions I had indicated to you or I
13 had asked you whether you knew Mr.
14 Bodack had been mentioned prior to
15 that --- what that CI or Bridges, I
16 think you had indicated that it was
17 Bridges, had mentioned in October of
18 '98; right? To the best of your
19 knowledge the first time Bodack was
20 mentioned was October of '98?

21 A. To the best of my knowledge
22 the confidential informant of the FBI
23 mentioned the name Bodack in October
24 of '98.

25 Q. Okay. If I represented to you

1 that I think that Bodack was
2 mentioned as early as the beginning
3 of 1998 in FBI documents would that
4 surprise you?

5 A. I wouldn't know that.

6 Q. And you wouldn't have any way
7 of knowing it?

8 A. No, sir.

9 Q. Because you didn't ask the FBI
10 the extent of the public corruption
11 they suspected, what connections they
12 suspected; right?

13 A. No, I just took what
14 Lieutenant Colonel Hikus and Captain
15 Ober told me that the FBI
16 investigation was closed, unfounded
17 and the most they could find was a
18 bad trooper.

19 Q. Well, Colonel Coury told us
20 that the FBI indicated something to
21 him and he'd want to question them on
22 what's this about, you know, what are
23 the details, and how do you think the
24 state police is involved and who do
25 you think is involved, et cetera.

1 Now, in fairness to Mr. Coury, that
2 was what he thought his methodology
3 might be, I believe, when I asked him
4 that question. And in fairness to
5 him it's the way he felt it should
6 have been approached by Captain Ober.
7 Now, with that characterization,
8 that's my recollection, do you
9 remember when he testified to that
10 during his deposition?

11 A. No, I do not.

12 Q. Okay. Well, then I'll just
13 let you go on that question, because
14 you don't remember that. Now, on
15 line two it says was I a subject of
16 an investigation or any of lieutenant
17 colonels. So what you're asking Mr.
18 Mascara is, you know, was I or any of
19 my lieutenant colonels the subject of
20 an investigation.

21 A. Yes.

22 Q. Okay. And he said no?

23 A. Yes.

24 Q. Did you ask him if you should
25 have been subject to an

1 investigation?

2 A. No, I did not.

3 Q. Did you ever ask him if the
4 FBI ever had any reasons to believe
5 that you or some of your lieutenant
6 colonels could have been involved?

7 A. In getting back to the
8 question before that where I said ---
9 two questions before that where I
10 said ----.

11 Q. You go back, sir, it's fine.
12 You go right ahead.

13 A. Whatever it was. He would
14 have gotten back when it was, was I
15 the subject of an investigation or
16 lieutenant colonel. I'm sure your
17 name was never mentioned. If I were
18 I would have been told is what he
19 told me.

20 Q. Okay.

21 A. If you were I would have been
22 told.

23 Q. Forgive me. I'm not laughing
24 at you.

25 A. I'm sure your name was never

1 mentioned.

2 Q. I'm not laughing at you. I'm
3 not, that laughter --- let me tell
4 you why I laughed because I apologize
5 to you. It was not at you and I ---
6 that may have come across to you as
7 rude and I don't --- I think you know
8 me enough by now to know that that's
9 one thing I try not to do, I try hard
10 not to be rude.

11 The reason I laughed is
12 because of all of the testimony I've
13 heard from so many people about how
14 you do an investigation and here's my
15 question. You're absolutely certain
16 that Rick Mascara said to you that if
17 your name had been mentioned he would
18 have told you?

19 A. Yes, I am.

20 Q. Isn't that improper?

21 A. Say it again.

22 Q. Sir, if we're going to do
23 public corruption investigations in
24 the United States and we put
25 friendship as law enforcement

1 officers above the integrity of an
2 investigation, I may not be
3 understanding it properly, that's why
4 I'm asking you this, how are we ever
5 going to get rid of public corruption
6 if we ever can?

7 ATTORNEY CHRISTIE:

8 Counsel, I object.

9 Maybe you're not understanding
10 properly because if you're
11 basing --- are you basing that
12 question on the excerpt that
13 the Commissioner just read
14 from there saying that if you
15 were, you, the Commissioner,
16 was the subject of an
17 investigation, I would have
18 been told. Who's the I that
19 Mascara's talking about?

20 ATTORNEY BAILEY:

21 Counsel, you have ---.

22 ATTORNEY CHRISTIE:

23 Well, that's where I
24 think you may be misleading.

25 ATTORNEY BAILEY:

1 You have the
2 Commissioner. He can answer.
3 You're trying to testify and
4 obviously ---.

5 ATTORNEY CHRISTIE:

6 No, you're trying to
7 testify, Counsel.

8 ATTORNEY BAILEY:

9 Yes, you are. You
10 know, please stop what you're
11 doing. If you have an
12 objection, state it for the
13 record.

14 ATTORNEY CHRISTIE:

15 I just did.

16 ATTORNEY BAILEY:

17 And let me go back.

18 BY ATTORNEY BAILEY:

19 Q. Are you telling me ---.

20 ATTORNEY BAILEY:

21 Move to strike.

22 BY ATTORNEY BAILEY:

23 Q. Are you telling me, sir, that
24 Mr. Mascara is saying in response to
25 your inquiry here that if your name

1 had been mentioned he would have told
2 you?

3 A. That's what he told me. And
4 it was prefaced with my comments to
5 him when we first started to talk
6 that if this was --- if my questions
7 were going to interfere with any
8 investigation, don't talk to me,
9 don't say anything or something along
10 those lines.

11 Q. Yes. But he said if your name
12 --- but his response to that, and I
13 think that's admirable of you to say
14 that to him, I have no problem with
15 that. But his response to that is,
16 and this is what I'm asking you
17 about. I'm asking you whether this
18 is proper ethics for a law
19 enforcement official to say, no, if
20 your name had been mentioned I would
21 have told you. That's not proper; is
22 it? I mean, if he received
23 information that you had done
24 something wrong he should put his law
25 enforcement responsibilities ahead of

1 his loyalty to you; shouldn't he?

2 A. You lost me, but I agree in
3 concept that the issue of loyalty
4 should not be involved in an
5 investigative decision.

6 Q. Well, then why is he telling
7 you if your name had been mentioned
8 that he would tell you? I take that
9 to mean that he would have put
10 loyalty to you. That's what I may
11 not be --- that's why I'm asking
12 about this conversation.

13 A. I don't know what was in his
14 --- I don't know what he meant by
15 that. I don't know what was in his
16 mind. I can just tell those were the
17 words that he used.

18 Q. Why did you write them down?
19 Why was that important to you?

20 A. If you were, I would have been
21 told. I'm sure your name was never
22 mentioned.

23 BRIEF INTERRUPTION

24 BY ATTORNEY BAILEY:

25 Q. I'm sure your name was never

1 mentioned. Well, did he say that
2 about lieutenant colonels or he said
3 that about your name. Remember I
4 asked you there's only one colonel;
5 right?

6 A. That's correct.

7 Q. And that's the commissioner,
8 that's the way the Pennsylvania State
9 Police are structured. And at this
10 time the commissioner is you. You're
11 the colonel. So when he says your
12 name was never mentioned, you took
13 that to mean by either rank or name;
14 is that fair to say?

15 A. I think that's fair to say.

16 Q. Sure, sir. But he doesn't say
17 lieutenant colonels. Did you then
18 follow on and say lieutenant colonels
19 or did you take it that he meant
20 lieutenant colonels also?

21 A. I think he meant lieutenant
22 colonels because I prefaced that, was
23 I a subject of an investigation or
24 any of lieutenant colonels.

25 Q. But he says if you were

1 mentioned I would have been told.
2 You were never mentioned, sure that
3 you were never mentioned. You think
4 that he's including lieutenant
5 colonels; right?

6 A. Yes, I do.

7 Q. But then that isn't correct;
8 is it? That isn't correct because
9 there was a tape on October 13th,
10 1998 that, in fact, used, at least
11 used the term; am I correct?

12 A. Yes, there is. But I don't
13 know what credence the FBI agent or
14 the FBI office gave to that term that
15 was used by the applicant of the job.

16 Q. But you know that Captain Ober
17 was concerned about who to tell
18 because he was concerned enough about
19 it that he brought it up and the FBI
20 was concerned enough about it for
21 some reason because Rick checked it
22 out and told you that Ober had
23 expressed concern; didn't he? And
24 that's on page two; right?

25 A. Yes, he told me that ---

1 Q. Yes.

2 A. --- Ober was concerned about
3 going anywhere with the information.

4 Q. Absolutely. Now, does that
5 mean that you asked Rick what Ober
6 said? I mean, you said this wasn't
7 into Ober in facts and circumstances
8 and that's fine. But did you ask
9 Rick if Ober ever mentioned what he
10 was going to do with the information
11 or anything like that?

12 A. No, I didn't.

13 Q. Then why did you know --- do
14 you know why Rick would then think it
15 important enough to bring it up and
16 you think it important enough to mark
17 it down on these sheets?

18 A. I don't know why he brought it
19 up. But it was what we discussed and
20 I marked it down.

21 Q. All right, sir. Thank you.
22 Now, going back, we're still on page
23 one; okay? Now, I'm the subject of
24 an investigation. I was never
25 mentioned. Then it goes, I can't

1 read that. No, is that what that is
2 on the third line there?

3 A. I think that's a no.

4 Q. No, dash I, read it, I cannot
5 read it, sir. I'm sorry.

6 A. I remotely remember something
7 about an investigation of local
8 municipalities and testing.

9 Q. Okay. Do you know whether
10 that was after Rick called you back?

11 A. No, that was the twelve
12 o'clock phone call, phone
13 conversation.

14 Q. So Rick really is, without
15 knowing anything about the
16 investigation, carte blanche, saying
17 to you, without knowing what's in the
18 investigation, which he says he's
19 pleading ignorance about, saying to
20 you, if you had been mentioned, I'd
21 have told you? That's just blind
22 loyalty; isn't it, Colonel Evanko?

23 A. I don't know what --- I don't
24 know what was in his mind when he
25 made that statement.

1 Q. You said he was your friend.

2 A. Yes, he was.

3 Q. How long have you guys been
4 friends?

5 A. Probably since he went to
6 Pittsburgh and I'm not sure how long
7 that would have been.

8 Q. Did you ever say you were
9 going to have the agent transferred?
10 Did you ever say you were going to
11 have Mr. Cush transferred, sir?

12 A. No.

13 Q. Did you ever say that to
14 anybody?

15 A. No.

16 Q. Colonel Hikus is lying about
17 that; right?

18 A. I never said that to Colonel
19 Hikus or to anybody else.

20 Q. Do you believe that Colonel
21 Hikus lied about that or are you
22 saying that he, and if he didn't lie
23 about it, he made an error? Is that
24 what you're saying?

25 A. One of the two.

1 Q. One of the two. You feel very
2 strongly about that; don't you?

3 A. Yes, I do.

4 Q. Did you ever say you were
5 going to call Mr. Freeh?

6 A. Yes, I did.

7 Q. But you didn't?

8 A. No, I did not.

9 Q. And you're testifying here
10 today you never placed a call to Mr.
11 Freeh?

12 A. That is correct.

13 Q. All right. Now, sir, after
14 that, do you see you have no and you
15 have that sentence following it
16 there? But the next sentence says,
17 what are you saying there?

18 A. Not familiar with this, get
19 back to you.

20 Q. Okay. When you talked to Rick
21 do you remember if you were angry?
22 Were you upset? Did you tell him
23 that you were upset or anything like
24 that? Anything like that?

25 A. I don't think I was angry. I

1 think I was just calling him to talk
2 to him about this.

3 Q. Remember I had asked you about
4 the length of time in between, some
5 questions. I want just a couple
6 little follow-up questions on the
7 length of time. What occurs between
8 March 12 and --- or I'm sorry, sir.
9 I'm sorry. May 12 and May 20, I'm
10 sorry. May 12 and May 20. On the
11 13th, that was the day that you had
12 --- there was another meeting with
13 Colonel Hikus and you had Colonel
14 Coury come in; right? Just a second.

15 Colonel, let me go back and
16 unjumble that. It was very awkward
17 and I apologize for that. We know
18 that on May 12th, 1999 you had the
19 meeting with Colonel Hikus. They
20 requested it, Colonel Hikus and
21 Captain Ober. And they initially
22 informed you about the FBI probe;
23 correct?

24 A. That is correct.

25 Q. All right. And there was

1 another meeting which occurred on May
2 13th; am I correct? With Colonel
3 Hikus?

4 A. It was a 10 to 15-second
5 conversation.

6 Q. Well, let me tell you why I'm
7 asking, because I think there was
8 later a statement asked of Colonel
9 Coury to give a statement about what
10 was discussed with Colonel Hikus and
11 certainly it took a lot more than 10
12 or 15 seconds, and I'm trying to sort
13 this out. Let me go back again.
14 Let's try to reconstruct it again.
15 I'm not trying to trip you up. I
16 want to try to get the facts
17 sequenced.

18 It's May 12, 1999. Colonel
19 Hikus and Captain Ober have a meeting
20 with you and they request an
21 opportunity to speak with you, and at
22 that time they tell you about this
23 FBI probe. You admitted Colonel
24 Hikus says you were agitated, you
25 have admitted that you were angry and

1 upset. And you've given us some of
2 the reasons. My understanding is
3 that at the May 12, 1999 meeting you
4 and Lieutenant Colonel Hikus and
5 Captain Ober were the only three
6 there. Am I correct?

7 A. For the first meeting, yes,
8 sir.

9 Q. All right. There was another
10 meeting on the 12th then?

11 A. Yes, sir.

12 Q. All right. Now, I'm getting
13 straightened out. The second meeting
14 on the 12th though, Captain Ober was
15 not there?

16 A. That is correct.

17 Q. Okay. And in the second
18 meeting on the 12th, it was you,
19 Lieutenant Colonel Hikus, and
20 Lieutenant Colonel Coury?

21 A. That is correct.

22 Q. Now, Lieutenant Colonel
23 Wescott was not at that meeting;
24 right?

25 A. No, he wasn't.

1 Q. Now, were there any other
2 meetings that day about this matter
3 that you had where Lieutenant Colonel
4 Hikus was present?

5 A. There wasn't any other
6 meetings that day, no.

7 Q. At all about this subject; is
8 that correct?

9 A. That's correct.

10 Q. All right. The next day, May
11 the 13th, 1999, you had another
12 meeting about this subject?

13 A. Yes, sir.

14 Q. Now, at that meeting,
15 Lieutenant Colonel Hikus was there;
16 correct?

17 A. Yes, sir.

18 Q. Lieutenant Colonel Coury was
19 there?

20 A. Yes, sir.

21 Q. And Lieutenant Colonel Wescott
22 was there?

23 A. Yes, sir.

24 Q. Who else in addition to those
25 people were there?

1 A. It was just the four of us.

2 Q. All right. Where did that
3 meeting take place?

4 A. I believe that was at the
5 academy.

6 Q. All right. Sir, did you take
7 any notes or make any recordings of
8 that meeting?

9 A. No, I did not.

10 Q. All right. Now, do you know
11 whether any of the other gentlemen
12 there made any recordings or notes?

13 A. I don't believe so.

14 Q. And certainly that wasn't a
15 15-second meeting?

16 A. I'm not sure. There was
17 another meeting with Lieutenant
18 Colonel Hikus and myself where he
19 would then tell me, and I think we
20 were still at headquarters, colonel,
21 the term colonel, was used.

22 Q. And in --- I'm sorry, sir.

23 A. In this.

24 Q. Okay. Now, you were concerned
25 about that because that impacted you

1 personally?

2 A. That impacted --- directly
3 impacted me.

4 Q. And that's certainly
5 understandable. Now, my
6 understanding is, if I recollect
7 correctly, that when Mr. Hikus gave
8 his statement to Mr. Williams during
9 the investigation that you ordered,
10 and we're going to go to that very,
11 very shortly, that Mr. Hikus
12 indicated to Mr. Williams and Mr.
13 Wertz that indeed Mr. Ober had used
14 the word colonel. Do you remember
15 that?

16 A. No, I do not.

17 Q. Okay. So you don't know
18 whether he --- how Mr. Hikus, and I
19 may be wrong in my characterization
20 by the way, but I'll double-check it.

21 A. In their briefing to me, no,
22 they did not.

23 Q. Okay.

24 A. But I took it that Lieutenant
25 Colonel Hikus got that information

1 from Captain Ober.

2 Q. That's fine. And I want to
3 also ask you, you are aware that when
4 Mr. Williams and Mr. Wertz
5 interviewed Mr. Hikus, Lieutenant
6 Colonel Hikus, that they taped that
7 interview?

8 A. Yes, sir.

9 Q. Now, you have those tapes;
10 right?

11 A. I do not, but ---.

12 Q. Your attorneys have them?

13 A. Yes.

14 Q. You know that we've requested
15 those tapes and an opportunity to
16 listen to them?

17 A. I don't know.

18 Q. And do you know, do you have
19 the tapes of the FBI, that the FBI
20 turned over, at least what they did
21 turn over to your people? Do you
22 know whether or not your staff has
23 that?

24 A. I don't know whether we have
25 those tapes or not.

160

1 Q. Okay. Have you ever heard any
2 of the tapes in this matter, Colonel?

3 A. No, sir.

4 Q. Have you ever read any of the
5 statements in this matter?

6 A. Yes, I have.

7 Q. You've read Lieutenant Colonel
8 Coury's statements; is that right?

9 A. Yes, sir.

10 Q. Well, before we get to those I
11 want to finish up some questions on
12 this exhibit and then what I'm going
13 to do is I'm going to ask you about
14 that investigation; okay? The
15 investigation that you ordered by
16 Captain Williams and Lieutenant ---
17 I'm sorry, Major Williams and Major
18 Wertz. I'll try to get these ranks
19 straightened out. I'm sorry. I'm
20 doing my best with them. Okay.
21 Getting back to you. That's the end
22 of the first page. Do you agree with
23 me?

24 A. Yes, sir.

25 Q. Okay. Let's go to the next

1 page. What does 1237 mean?

2 A. 12:37. It's the time.

3 Q. Okay. That's a time thing.

4 Okay. Now, up above there it says
5 John somebody or other ASAC. What's
6 that?

7 A. Maybe it was the ASAC of the
8 Pittsburgh office.

9 Q. Okay. Now, it says probably
10 wasn't, what's that say?

11 A. Briefed.

12 Q. So that's Rick telling you
13 that he probably wasn't briefed?

14 A. Yes.

15 Q. Sir, do you know whether Cush
16 and/or Suhy didn't trust the
17 friendship between you and Rick?

18 A. I have no idea. I don't even
19 know if they really knew each other.

20 Q. And then this sentence here is
21 didn't get here until June. What's
22 that mean?

23 A. I think it means that Mascara
24 wasn't assigned to the Pittsburgh
25 office until June.

1 Q. Well, did he ever indicate
2 that when he came into the office
3 that he reviewed active files? My
4 understanding is that's usually done
5 and I just want to know if he ever
6 mentioned that?

7 A. No, he never mentioned that.

8 Q. What if Len Bodack had been
9 mentioned say on February 20th, 1998
10 in the FBI investigation? Do you
11 think Mr. --- the State Senator,
12 talking about favors in the
13 Governor's Office, do you know
14 whether Mr. Mascara would know
15 anything about that?

16 A. I don't know.

17 Q. Second line under probably
18 wasn't briefed. First, something or
19 other, January '97. What's that say?

20 A. First surfaced, I guess that's
21 January or June, I don't know. I
22 think it's January '97.

23 Q. Well, your word June up in the
24 first line, I looked at that, because
25 I was interested in that date, the

1 word June up in the first line,
2 J-U-N-E is written out and then
3 J-A-N, it looks to me like January
4 '97.

5 A. It is probably January.

6 Q. Okay. It says, now, you bear
7 with me, if I can read this
8 correctly, IAD notified. And then it
9 says, if I'm reading it correctly,
10 Captain Ober and a dash.

11 A. Yes.

12 Q. Now, you knew that Captain
13 Ober hadn't been notified in 1998
14 until October '98; right?

15 A. That's my understanding, yes.

16 Q. And it says first notified or
17 something January --- it was first
18 surfaced January '97, IAD notified.

19 A. Yes.

20 Q. Well, did you ask Rick, who'd
21 you tell in IAD in '97?

22 A. No, I didn't.

23 Q. Sir, can I ask why? I mean,
24 let me give you an offer why I'm
25 asking you this to give you fairness

1 to respond as completely as you can.
2 I understand you're upset about the
3 events of being notified in this,
4 personally and as a professional and
5 as a responsible public official. I
6 understand that. Here is an FBI
7 agent who's a friend and also the
8 special agent in charge and he says
9 that it first surfaces in January
10 '97, IAD is notified. Now, doggone
11 it, Colonel, you didn't know it then.
12 Nobody told you then. And yet Ober
13 gets told in '98, you're
14 investigating the circumstances under
15 which he was told and you've already
16 told us your primary concern was
17 Hikus and what he had done. We
18 already know that. But you're
19 looking at the facts and
20 circumstances.

21 Now, bear in mind, sir, that
22 the facts and circumstances are
23 these. No matter what Ober did or
24 what Ober knew, we know that Hikus
25 didn't know until the 1st of October

1 of 1998. And we know that you're
2 upset because you weren't told and
3 the chain of command may have been
4 circumvented in your view. Why
5 didn't you ask Rick? Here's my
6 question. That's where I'm going.
7 That's what I'd like to know about.
8 Why wouldn't you ask Rick about the
9 events of how the FBI notified IAD in
10 '97 and why you didn't know? Can you
11 explain why you wouldn't ask him
12 that?

13 A. No, I was just listening to
14 his response to my initial questions.

15 Q. Okay. Now, here it says,
16 after IAD notified, you didn't ask
17 him any questions. It says, Captain
18 Ober, then it says, dash, I think it
19 says, I was something aside it looks
20 like to me. What is that? What does
21 that say?

22 A. It was set aside.

23 Q. Okay. Until October '98. Do
24 you know why it was set aside?

25 A. No, I don't.

1 Q. Would you find it odd that it
2 was set aside if indeed Senator
3 Bodack was mentioned as early, if he
4 was, at least as early, if not
5 before, February '98?

6 A. I wouldn't have any idea why
7 the FBI set it aside.

8 Q. Did you ever ask them why they
9 set it aside?

10 A. No.

11 Q. Did you ever ask them why they
12 took a run at it, these are the words
13 here, your words. Did you ever ask
14 them why they took a run at it?

15 A. It was set aside until October
16 '98, took a run at it, political
17 corruption case. I think from
18 reading the statement of Cush, he had
19 a new supervisor that was helping
20 with his case load.

21 Q. Suhy, is that Mr. Suhy?

22 A. I believe it was probably Suhy
23 who told him to get on top of those
24 cases.

25 Q. Okay. Then it says, political

1 corruption case, then something,
2 looks like to influence SP, but I
3 can't read it.

4 A. Position I think. To
5 influence SP positions, dash, a
6 Trooper Stanton.

7 Q. Well, what did he mean by
8 position?

9 A. I don't know.

10 Q. Well, Stanton is a trooper;
11 right?

12 A. Yes.

13 Q. In fact, he had been a trooper
14 under Mr. Conley; right?

15 A. Yes, he was assigned to the
16 same troop.

17 Q. Yes, he was. He was under Mr.
18 Conley before Mr. Conley came up and
19 took over BPR; right?

20 A. He was one of the troopers
21 that were assigned to that troop.

22 Q. Sir, he could have been one of
23 thousands, millions. He was under
24 the command of Major Conley before
25 Major Conley came up and assumed the

1 command position at BPR. Am I
2 correct?

3 A. Yes, you are.

4 Q. Now, do you know why this word
5 position to influence state police
6 positions, why you put that verbiage
7 down?

8 A. It would be what the SAC told
9 me and I can speculate as to why he
10 said that.

11 Q. No, I won't ask you to
12 speculate. If you want to tell me
13 why --- I'm going to ask you a whole
14 lot of questions about that. I view
15 that as a very important sentence.
16 I'm going to ask you a lot of
17 questions about it, I admit. I'll
18 tell you where maybe we can save some
19 time. It just seems to me it would
20 be common sense that a trooper out
21 there, is it Troop A? Troop B?
22 Whatever it was. I know where he was
23 stationed also, but anyway, out there
24 in southwestern Pennsylvania. But at
25 first glance a trooper out there is

1 not going to be able to influence
2 what happens at the academy without
3 some kind of help or conspiracy,
4 somebody to back him up. That's only
5 common sense. Would you agree with
6 that?

7 A. It would have to be not only
8 the academy, but it would have to be
9 systemic in the organization.

10 Q. And systemic would mean take
11 one or more people and like go up
12 through the organization?

13 A. It would have to involve
14 psychologists, the academy personnel,
15 background investigators, and
16 probably other people.

17 BRIEF INTERRUPTION

18 BY ATTORNEY BAILEY:

19 Q. But haven't you played a role
20 in helping relatives or sons of state
21 troopers become state troopers? I
22 mean, have you played any role in any
23 of that ever?

24 A. What do you mean?

25 Q. Either trying to influence or

1 recommend or anything like that? I
2 mean, I would understand you have a
3 large organization, you get a lot of
4 requests. I'm not indicating it's
5 bad or wrong, but I mean, have you
6 ever recommended at least or done
7 anything at least in trying to help,
8 let's say, the son of a state trooper
9 become a state trooper?

10 A. I don't remember any.

11 Q. You don't remember. Okay. So
12 when you say that, and I'm asking
13 this question about position to
14 influence SP positions or state
15 police positions, you would agree
16 with me that Stanton, it's not the
17 kind of thing that Stanton out there
18 as a trooper in western Pennsylvania
19 can do on his own, it would involve
20 the confluence of a lot of people and
21 events to make it happen. That's
22 what you're saying; right?

23 A. I'm saying that and I'm saying
24 that Trooper Stanton was saying that
25 he could influence positions of

1 getting an applicant into the
2 academy. That's what I think that
3 means, Trooper Stanton said he was in
4 a position to influence state police
5 positions. That's what I think that
6 means.

7 Q. Okay. Now, and thank God as
8 it turned out that was nonsense;
9 right?

10 A. Right.

11 Q. It wasn't true; correct?

12 A. It was not true.

13 Q. But how do you know that at
14 the time when this thing starts if
15 somebody says something like that,
16 whether or not they have some
17 connection if you don't know? I
18 mean, if you don't know, the FBI
19 doesn't know, and they believe this
20 guy is making representations like
21 this, don't you have at least a duty,
22 sir, to check it out?

23 A. I think that's exactly what
24 was done by the FBI.

25 Q. But why would they come if

1 they thought it went up the ladder?
2 You just now told us that it would
3 have had to have been systemic, which
4 means it had to go up through the
5 system. And you've just got done
6 testifying a few minutes ago that
7 Rick said that if your name had been
8 mentioned they would come to you.
9 Now, you know, you are a human being,
10 you aren't God, so you can make
11 mistakes and you may be subject to
12 making errors of judgment and perhaps
13 even some sort of a defect in
14 character for a moment. We can all
15 bend. You know, we're --- we live in
16 a Judeo-Christian society. People
17 make mistakes, they sin, they make
18 errors.

19 If you're going to investigate
20 something like this and you have
21 information, I want to go back to
22 this thing of probable cause. My
23 question is if you're an
24 investigator, you get some
25 information out there, the FBI gets

1 some information, don't they have a
2 duty to check it out? And you've
3 just told us it would have to be
4 systemic, so if this guy makes this
5 claim, you've got to check it out;
6 right? You don't just dismiss it out
7 of hand and come and tell Colonel
8 Evanko; do you?

9 A. No, I don't think you dismiss
10 it out of hand. I think you
11 investigate it.

12 Q. Well, then Captain Ober did do
13 the right thing?

14 A. In going directly to
15 Lieutenant Colonel Hikus and not
16 telling his bureau director?

17 Q. Yes.

18 A. No, I don't believe so.

19 Q. So he should have told his
20 bureau director, who in this systemic
21 situation, it would have to be, just
22 happened to be Major Conley; right?
23 Isn't that what you told us, it was
24 systemic, and you just told us what
25 the responsibilities are about people

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1 informing targets and all that. With
2 all that stuff considered, the FBI is
3 doing an investigation, I got my
4 client sitting there trying to do his
5 job the best way he can, expresses a
6 concern to the FBI about what do I do
7 with this information. Apparently
8 something was discussed. We know
9 that. You've already told us it was,
10 and you made a note on it. What do
11 you want this man to do, sir? What
12 do you want Captain Ober to do in
13 light of your charge here today that
14 he violated FR 1-1.17? Can you
15 explain it to me?

16 A. Well, first of all I was
17 responding to your question as to
18 whether he had violated any rules and
19 regulations.

20 Q. All right, sir.

21 A. And I think that was a
22 violation.

23 Q. Okay.

24 A. And I think he should have
25 gone to the Director of the Bureau of

1 Professional Responsibility, Major
2 Conley.

3 Q. Okay. And that's it. That's
4 what you think he should have done;
5 right?

6 A. Yes, I do.

7 Q. Now, he didn't do that; did
8 he?

9 A. No, he did not.

10 Q. And hopefully, if this matter
11 goes to trial, the jury is going to
12 be able to sit there and decide
13 whether or not Captain Ober, all
14 things considered, exercised good
15 judgment and whether or not you're
16 correct in your analysis that he
17 violated FR 1.17, whatever it is.
18 Well, if he violated that thing why
19 wasn't he punished for it?

20 A. I don't think you have to take
21 every violation of the rule or
22 regulation and put it into the
23 internal affairs process and
24 discipline somebody. I think the
25 very fact ---.

1 Q. Fair enough. The very fact
2 what?

3 A. That's all.

4 Q. The very fact what? Answer my
5 question. The very fact what?

6 A. I think the fact that
7 Lieutenant Colonel Hikus gave Captain
8 Ober the orders that he did I think
9 mitigated Captain Ober's involvement
10 in this.

11 Q. So Captain Ober's lone and
12 singular error was not telling Kip
13 Stanton's commander at the time these
14 things occurred in this, of
15 necessity, systemic situation that
16 the FBI had made an inquiry about
17 selling positions in the state
18 police; agreed?

19 A. You're going to have to tell
20 me what the question is.

21 Q. I'm asking if you agree that
22 Captain Ober's error, if any, was
23 that he did not tell Kip Stanton's
24 commander, during the matters
25 complained of here in this systemic

1 situation, that the FBI was
2 investigating the selling of
3 positions? You agree? You have to
4 agree with me. You've testified to
5 that; haven't you?

6 A. First of all, it was not a
7 systemic allegation. I think we had
8 that on the record with Agent Cush
9 saying that he never mentioned
10 higher-up individuals in the state
11 police or the Governor's Office. And
12 yes, I do think that Captain Ober
13 should have gone to his bureau
14 director and told him about this
15 phone call from the FBI.

16 Q. Well, if you believe that
17 Captain Ober never heard this stuff
18 about higher-ups, never heard this
19 stuff about lieutenant colonels or
20 colonels or anybody like that, okay,
21 then Captain Ober is a liar and he
22 should have been punished. Isn't
23 that correct? He should have been
24 disciplined for lying. I mean, this
25 is an incredible lie, if he lied.

1 A. I don't know that the captain
2 lied. I don't know what was in his
3 mind. I can just tell you that my
4 focus was on Lieutenant Colonel
5 Hikus. And to tell you the truth
6 after I came to the conclusions after
7 reading the administrative inquiry
8 and after I advised Lieutenant
9 Colonel Hikus of what my conclusions
10 were, very frankly, I didn't give
11 Captain Ober much of a second
12 thought.

13 Q. Okay. All right. I', going
14 to give you a lot of questions, sir,
15 that I think will demonstrate to the
16 contrary. I'm going to give you an
17 opportunity to answer those. Let me,
18 before I get to that, let's finish up
19 the investigation. You at some point
20 asked somebody to appoint
21 investigators or did you appoint
22 investigators yourself?

23 A. The investigators aren't
24 appointed, they're assigned. And on
25 the May 13th meeting with Lieutenant

1 Colonel Hikus, Lieutenant Colonel
2 Wescott, Lieutenant Colonel Coury and
3 myself, we discussed this incident
4 again. And then Colonel Wescott ---
5 well, first of all, Colonel Coury
6 said to me --- the thing I said to
7 him, you mean after Lieutenant
8 Colonel Hikus left on the 13th?

9 Q. Yes.

10 A. I said, Tom, assign a couple
11 of BPR investigators and we're
12 talking. And when the four of us
13 were together, we talked about, I'm
14 going to get somebody to look at
15 these facts. Colonel Hikus left and
16 then I told Colonel Coury, in fact, I
17 don't even know when Colonel Hikus
18 left. But I told Colonel Coury get a
19 couple of BPR investigators and we'll
20 find out what the facts are here.
21 Colonel Coury said to me, hey, this
22 isn't a BPR investigation, it's not
23 appropriate to be in the BPR system.
24 And then I think it was at that
25 point that Colonel Wescott and I and

1 Colonel Coury decided to have Major
2 Wertz and Major Williams do these
3 interviews.

4 Q. Why was it not appropriate to
5 be in the BPR system if Mr. Ober had
6 violated field regulation 1.1 ---
7 1-1.17?

8 A. I was looking at this from a
9 point of view of something that ---.
10 I wasn't making an allegation of
11 misconduct.

12 Q. Why was he read his rights?
13 Did you tell them to read him his
14 rights?

15 A. I don't know that he was read
16 his rights.

17 Q. Merryman was read his rights.
18 What was he read his rights for?

19 A. I don't know that Merryman was
20 read his rights.

21 Q. So you didn't talk to these
22 guys about methodology; right?

23 A. If I talked to them and the
24 only reason I recollect having a
25 conversation with Wertz and Williams

1 is just from Lieutenant Wescott's
2 deposition where he said that I met
3 with them. But no, I would not have
4 given them direction on using
5 administrative rules.

6 Q. So you don't remember what
7 happened in the meeting you had with
8 Williams and Wertz?

9 A. No, I don't.

10 Q. Well, you remember Colonel
11 Wescott jumped in an airplane and
12 flew up to Williams and told him, I
13 got a job for you; right? You know
14 that?

15 A. I remember Colonel Wescott
16 stating that in his deposition.

17 Q. Well, do you remember who
18 initially recommended Williams and
19 Wertz?

20 A. It was probably Lieutenant
21 Colonel Wescott.

22 Q. You didn't tell him to go jump
23 in the airplane and go up and talk to
24 him first, don't do it by landline or
25 anything?

1 A. No.

2 Q. Did you ever have Wescott
3 investigated for wasting Pennsylvania
4 State Police resources in an
5 airplane, flying an airplane up there
6 when he could pick up a telephone and
7 say, come down here?

8 A. I don't know if, number one,
9 Lieutenant Colonel Wescott did it,
10 and number two, I don't know whether
11 Lieutenant Colonel Wescott went up
12 there for additional business. I
13 don't know. No, I did not have him
14 investigated.

15 Q. Well, I represent --- I, you
16 know, never mind. I remember his
17 testimony very well. Were you
18 present during his deposition?

19 A. Yes, I was.

20 Q. So you believe it was probably
21 Lieutenant Colonel Wertz (sic) who
22 recommended Williams and Wertz for
23 majors, two majors for this
24 investigation?

25 A. I think it was probably

1 Lieutenant Colonel Wescott who made a
2 recommendation to assign those two
3 majors.

4 Q. Lieutenant Colonel Coury
5 testified, I know you were here,
6 because I remember your being here,
7 that he had advised you, and I think
8 you've just testified to this, that
9 this wasn't a BPR type of
10 investigation. But what type was it
11 then?

12 A. It was an administrative
13 inquiry.

14 Q. An administrative inquiry.
15 What is that?

16 A. It's looking into the facts
17 and circumstances of an event.

18 Q. And you had no predilection at
19 that point to punish or arm anyone
20 over the events of the FBI probe; is
21 that correct?

22 A. That is correct.

23 Q. I believe that at some point
24 there was a meeting, a debriefing, if
25 you will, by Mr. Williams and Mr.

1 Wertz of the results of their
2 investigation?

3 A. There was a point in time when
4 they came and gave me the
5 administrative inquiry.

6 Q. Well, did you read it? Did
7 you go over it?

8 A. Yes, I did.

9 Q. Do you think they did a good
10 job, Williams and Wertz?

11 A. They answered the questions I
12 needed answered.

13 Q. And what were the questions
14 that you needed answered?

15 A. I needed to make an evaluation
16 of the judgment used by Lieutenant
17 Colonel Hikus in informing me as well
18 as Captain Ober too of not going to
19 his major.

20 Q. Well, one of the things in the
21 investigation as I remember it was
22 this thing about Mr. Ober renting a
23 hotel room and buying some beverages
24 for the FBI out there in Indiana. Do
25 you remember that?

1 A. Do I remember that as part of
2 the administrative inquiry?

3 Q. Sure.

4 A. No.

5 Q. Do you remember anything about
6 that?

7 A. I know that he filed a
8 grievance claim and was denied part
9 of that reimbursement.

10 Q. Well, we'll get to that. It's
11 okay for two cert teams to be
12 activated to escort assets for PNC
13 Bank across the state of
14 Pennsylvania. Do you know whether
15 they charged \$7.32 for each
16 Pennsylvania State Police vehicle
17 used?

18 A. I don't know.

19 Q. Do you know how many
20 Pennsylvania State Police vehicles
21 were used?

22 A. No, I don't.

23 Q. Do you know, I'd asked you
24 about the helicopter. You didn't
25 know whether the helicopter was used.

1 And you don't know whether PNC paid
2 for that?

3 A. I don't know.

4 Q. Do you know about a
5 Pennsylvania State Police Regulation
6 that says that the Pennsylvania State
7 Police are not supposed to be used to
8 guard money or bank assets for folks?

9 A. I think there's a provision in
10 there absent exigent circumstances,
11 something like that.

12 Q. Well, what were the exigent
13 circumstances?

14 A. Five billion dollars.

15 Q. Oh, were they dollars,
16 Colonel?

17 A. Currency, negotiable
18 instruments, whatever.

19 Q. Well, negotiable instruments.
20 Do you know whether those negotiable
21 instruments, the way that they were
22 put together --- I know a little bit
23 about negotiable instruments. Do you
24 know whether the way they could have
25 been put together that they could

1 have been assaulted or whatever?

2 A. That they could have been
3 cashed?

4 Q. Sure, taken and used, yes.

5 A. It was my understanding that
6 they could, yes.

7 Q. Well, how much did you
8 investigate that?

9 A. I didn't investigate it at
10 all.

11 Q. You just did it?

12 A. Yes.

13 Q. Without the Governor's Office
14 knowing anything about it?

15 A. Yes.

16 Q. Without Governor Ridge knowing
17 anything about it?

18 A. Yes.

19 Q. Were you suspecting terrorism?

20 A. Five billion dollars I didn't
21 know what to expect.

22 Q. Well, the number is, you know,
23 five billion dollars. I know that
24 sounds very impressive and all that
25 sort of thing, you know, but are

1 there private companies that
2 specialize in doing that kind of
3 work?

4 A. I don't know.

5 Q. Well, did you ask PNC why they
6 didn't go hire people that are
7 qualified and have the kind of
8 vehicles and the kind of equipment to
9 do that sort of thing?

10 A. I don't believe so.

11 Q. Five billion bucks, maybe they
12 could have bought a warehouse down in
13 Philadelphia to brick it up for
14 \$50,000 and would have saved money
15 and didn't have to transport that
16 stuff. I mean, all you got to do is
17 own it; right? Isn't it true that
18 they were changing their corporate
19 headquarters from Philadelphia to
20 Pittsburgh or something like that?

21 A. I'm not sure.

22 Q. You didn't even check that
23 out?

24 A. If I did, I don't recall it.

25 Q. Where do you draw the line on

1 whether or not you activate your cert
2 teams in order to help private
3 companies in Pennsylvania move their
4 assets around?

5 A. I'm not sure what you mean.

6 Q. Well, how does that compare
7 with the situation Captain Ober was
8 in where he rents a hotel room, okay,
9 and orders a couple cups of coffee
10 for the FBI? How does it compare in
11 terms of spending my taxpayer's, your
12 taxpayer's, we're all taxpayers, in
13 spending taxpayer money and
14 conforming to Pennsylvania State
15 Police Regulations? Because he was
16 denied reimbursement for that.

17 A. I'm not sure what you mean by
18 the question.

19 Q. I want you to compare the two
20 situations in terms of what you know
21 about Pennsylvania State Police
22 Regulations, Pennsylvania State
23 Police practices and the benefits of
24 using Pennsylvania State Police
25 resources to rent a hotel room on one

1 case and order a couple of cups of
2 coffee for two FBI agents in a public
3 corruption investigation as opposed
4 to activating two cert teams, better
5 than 40 people, all kinds of
6 Pennsylvania State Police vehicles
7 with people driving those,
8 helicopters, to help PNC, who's a
9 state depository, move assets from
10 Philadelphia to Pittsburgh.
11 Something they can go and hire Brinks
12 and Wells Fargo and people like that
13 who move billions of dollars every
14 single day in this country. Now,
15 what compares about those two
16 situations such that this man, my
17 client, has to grieve the
18 reimbursement of a few bucks in doing
19 a public corruption investigation?

20 A. I don't think they are
21 comparable circumstances.

22 Q. Sir, back on Evanko Number
23 Two, the second page of Evanko Two,
24 do you see the word CI?

25 A. Yes.

1 Q. It says Stanton approached
2 him. And then what does that say
3 there?

4 A. I can pay you 10K, \$10,000 for
5 this.

6 Q. Okay. Did they ever tell you
7 who the CI was and what they did?

8 A. Did Special Agent Mascara tell
9 me that?

10 Q. Yes.

11 A. No. In fact, I don't think
12 they ever revealed the confidential
13 informant.

14 Q. Okay. Now, there's an empty
15 line there and then what's the next
16 line, what's that I see? It looks to
17 me like it's turn over tapes and
18 conversations to Ober. Is that what
19 it says?

20 A. Yes, sir.

21 Q. Then it says, this I cannot
22 read. What's that statement?

23 A. Source went to rep and nothing
24 happened, dash, Ober concerned about
25 gong anywhere with info.

1 Q. Okay. Source went to rep and
2 nothing happened. Do you understand
3 rep to mean a State Representative?

4 A. I think that's what he was
5 referring to.

6 Q. Well, how did the FBI know
7 that nothing happened?

8 A. I guess they did an
9 investigation.

10 Q. And you would assume that what
11 that means is that Stanton was not
12 able to deliver; right?

13 A. I would assume what that meant
14 was that the representative wouldn't
15 get involved in that. That's what I
16 understand.

17 Q. You would assume what, that
18 the representative ---?

19 A. That the representative was
20 not involved in whatever was alleged.

21 Q. Okay. We went over the Ober
22 stuff. Now, go down to the next line
23 here, is investigation closed, is
24 that what you ---?

25 A. Yes.

1 Q. Didn't you believe what Hikus
2 and Ober had told you or what Cush
3 had told, whether it was Cush or
4 another guy, I think there was a guy
5 Kelly that was actually an FBI agent?

6 A. I don't know.

7 Q. So you were asking Rick again
8 now to confirm that the investigation
9 is closed?

10 A. This is Mascara talking to me.

11 Q. I'm sorry, sir. Yes, you're
12 asking Rick Mascara again. So
13 Mascara is saying to you, is the
14 investigation closed? You're not
15 saying that to him?

16 A. No, I'm saying that to him,
17 this investigation is closed.

18 Q. Right, right. Dash, case
19 declined, federal prosecutors.

20 A. Or federal prosecution.

21 Q. Okay. Which you took that to
22 mean was that Rick was saying that
23 the feds aren't going to prosecute?

24 A. Yes, I think that was the
25 case.

1 Q. Then there's a dash, and what
2 does that say, investigation closed?

3 A. Investigation closed,
4 underneath that, to PSP. Closed,
5 dash, to PSP, underneath that.

6 Q. Okay. Sir, the next line,
7 what is it, overtime? What is that?

8 A. What was outcome.

9 Q. And again, this is what Rick's
10 saying?

11 A. Yes, sir. Well ---.

12 Q. I'm sorry.

13 A. I asked what the outcome was.

14 Q. Okay. It looks like Stanton
15 is bad, dash, nothing systemic, which
16 you've already explained to us, dash,
17 now what does that say?

18 A. What's the next line say?

19 Q. Yes, yes.

20 A. Nobody else but bad statey is
21 mentioned. Opened two and a half
22 years.

23 Q. Two and a half or three and a
24 half?

25 A. Two and a half.

1 Q. Nobody but bad statey
2 involved; right?

3 A. Yes. Or bad statey is
4 involved, one of the two.

5 Q. Okay. Now, this says opened
6 two and a half years?

7 A. Yes.

8 Q. Then it says Major Williams to
9 see you, sort things out. Do you
10 have any information to indicate that
11 any of these FBI agents at any point
12 have talked to Lieutenant Colonel
13 Hikus?

14 A. No, I do not.

15 Q. So you got Williams going out
16 to talk to them about what occurred
17 between the FBI and Captain Ober?

18 A. Yes, sir.

19 Q. Did it occur to you that maybe
20 the FBI would think that you didn't
21 trust your own people?

22 A. No, that never occurred to me.

23 Q. I mean, did you think that
24 maybe it was embarrassing to you that
25 you have your investigators to go out

1 and check what's going on between the
2 FBI and your people?

3 A. No, I didn't.

4 Q. Well, your investigators
5 didn't go out and check what had
6 happened with the previous
7 investigation, first surfaced in '97
8 IAD notified you. You didn't have
9 Mr. Williams checking that out; did
10 you?

11 A. No, because by the time I got
12 the administrative inquiry, that
13 criminal and administrative
14 investigation was already ongoing.

15 Q. And I can't figure that out.
16 If you're looking at facts and
17 circumstances and the criminal
18 investigation's into Stanton, who we
19 know is a bad cop, but your concern
20 about Hikus and Ober is totally
21 different. Although, Ober not much
22 because you knew what he did and he
23 was under orders from Hikus. You
24 don't see those as two different
25 things? You see those as the same

1 kind of thing, that they're going to
2 yield the same kind of response to
3 the questions you have about what
4 occurred?

5 A. I'm not sure I understand.

6 Q. Well, the administrative
7 inquiry into Stanton is going to be
8 what he did as a result of the
9 criminal activity he was involved in;
10 right?

11 A. It was an internal affairs
12 investigation into Stanton's
13 violation of the law.

14 Q. Yes. And you wouldn't let
15 that interfere with a criminal
16 investigation; right?

17 A. No, it would have been
18 concurrent with the criminal
19 investigation.

20 Q. But you would never let it
21 interfere with a criminal
22 investigation; right?

23 A. No, I would not let it
24 interfere. I would not expect it to
25 interfere with a criminal

1 investigation.

2 Q. Right. And the FBI told you
3 that they were not going to prosecute
4 Stanton, that they declined to
5 prosecute.

6 A. I don't know whether it was
7 the FBI that declined the prosecution
8 or if it was the U.S. Attorney's
9 office.

10 Q. And your testimony here today
11 is that there was no need to check on
12 who at IAD had been told earlier,
13 why that had not been reported to
14 you, why you hadn't been informed.
15 And you don't know when Lynn Bodack
16 (phonetic) was mentioned or any other
17 public official. And you don't know
18 why this thing sat out there with the
19 FBI. You figured that the criminal
20 investigation into Stanton and the
21 administrative inquiry into Stanton
22 was underway, and it would yield
23 answers to those questions. That's
24 what you felt?

25 A. I guess I thought that the

1 criminal investigation would proceed
2 and that they would probably arrest
3 him.

4 Q. Do you know whether Major
5 Williams ever went out and talked to
6 Mascara?

7 A. I don't think so.

8 Q. Why not?

9 A. I don't know.

10 ATTORNEY BAILEY:

11 I'm going to suggest at
12 this point that we break for a
13 lunch period. At least I
14 would like to. It's a good
15 point for me here. Darrell,
16 I'd like to you go and check
17 your personnel file at this
18 point. If they want to send
19 Mr. Brown one, that's fine.
20 And with that being said,
21 we'll reconvene at 1:30.

22 SHORT BREAK TAKEN

23 ~~JUDGE CALDWELL:~~ *error*

24 The time is 1:37 p.m.
25 on March 27, 2002 and we're

200

1 resuming the deposition of Mr.
2 Evanko.

3 VIDEOGRAPHER:

4 Back on record.

5 VIDEO RECORD AT 1:37 P.M.

6 ATTORNEY BAILEY:

7 All right. Ladies and
8 gentlemen, good afternoon. I
9 would like to inform opposing
10 counsel and Mr. Evanko that we
11 have gone over and looked at
12 Mr. Ober's file, that the
13 document that I was talking
14 about --- and we incidentally
15 did this while the custodian
16 was there with us, naturally.
17 The document that I referred
18 to is not in his file. This
19 file only exists at one other
20 location that we know of.
21 Where is that, headquarters is
22 what file?

23 MR. OBER:

24 LCE Headquarters.

25 ATTORNEY BAILEY

201

1 LCE Headquarters. That
2 he has reviewed his file there
3 in the presence of Major
4 Dawire. He has never reviewed
5 either of these files where he
6 has not been present. And
7 also the file was supposedly
8 brought over for our
9 inspection during the document
10 inspection that we did.

11 I make the following
12 representations, I'd like to
13 Mr. --- in fact, may get Mr.
14 Ober on tape at the end of
15 Commissioner Evanko's
16 deposition. I want to refer
17 to that again. But at no time
18 has he taken anything out of
19 his file except to copy it.
20 He did copy because I had
21 asked him to review his file,
22 this document.

23 He checked that LCEE
24 file again with somebody
25 present this morning. The

1 document is missing from his
2 file. There's no way in the
3 world he could have taken it
4 out of his file. The document
5 is missing from his file over
6 at the headquarters. The
7 document is a key and material
8 piece of evidence in the
9 retaliation and damage portion
10 of the claim, and we are
11 complaining about that fact.
12 That being said, we'll deal
13 with that at the end of this
14 deposition.

15 I would respectfully
16 ask opposing counsel, when you
17 had deposed Mr. Ober, I had
18 indicated there may be times
19 when we need extra time ---.

20 BRIEF INTERRUPTION

21 ATTORNEY BAILEY:

22 Let me say again.

23 There were times when Mr. Ober
24 was deposed, the request had
25 been made of me to make him

203

1 available for additional time.
2 I think it's going to be
3 difficult to complete Colonel
4 Evanko today. I'll need some
5 additional time, and I'm
6 requesting the same courtesy
7 that I've extended in that
8 same regard. Would that be
9 okay? We need a little bit
10 more time.

11 ATTORNEY CHRISTIE:

12 We'll go as late as you
13 can tonight and we can make
14 Colonel Evanko available again
15 tomorrow morning.

16 ATTORNEY BAILEY:

17 Well, okay. I've got a
18 hearing up around Allentown
19 tomorrow morning, but ---.

20 ATTORNEY CHRISTIE:

21 Then we should go late
22 tonight then.

23 ATTORNEY BAILEY:

24 Well, we'll do our best
25 to do this. And if we can do

1 it at another time, I'd
2 appreciate it. Tomorrow may
3 be ---I'll double-check, when
4 you get a chance to break,
5 just on that. But I think
6 I'd ---.

7 ATTORNEY CHRISTIE:

8 Colonel Evanko is
9 leaving on Saturday for a
10 couple of weeks. So that's
11 why we're saying ---.

12 ATTORNEY BAILEY:

13 Okay. Well, let's try
14 to get at it then. Colonel,
15 try to get through this as
16 best we can. Okay?

17 BY ATTORNEY BAILEY:

18 Q. I want to change gears just a
19 little bit, Colonel, if I can. Do
20 you have a recollection of the Bureau
21 of Education asking for \$20,000 for
22 model cars?

23 A. No, I don't.

24 Q. This is 164 scale die cast
25 model 1995 Ford SVT Mustang Cobra at

1 \$4 each. 5,000 was the quantity
2 requested for a total of \$20,000,
3 requested by Jane A. First items
4 will be used as special giveaways
5 during the presentation of the
6 full-size model vehicle. Now, the
7 reason I'm asking you is you know
8 where I'm coming from. Apparently
9 these things were to be used during
10 the presentation of drug and alcohol
11 education programs by the department.
12 I just want to ask you if you know
13 whether the vehicles were ever
14 delivered to the department and how
15 they were used, if you know?

16 A. I don't know.

17 Q. And do you feel that an
18 expenditure like this is justified as
19 a precautionary measure? Captain
20 Ober has indicated that from a
21 precautionary point of view when he
22 met with the FBI agents, Mr. Cush and
23 I forget who the other gentlemen was,
24 out there in Indiana, that he had
25 rented a hotel room and got some

1 coffee. Do you think that this
2 expenditure here is on an equal level
3 with the judgment that Mr. Ober
4 displayed in renting that hotel room?
5 And what was the purpose for the use
6 of those items?

7 Q. Items would be used as special
8 giveaways during a presentation of
9 the full scale model vehicle. A
10 full-size Mustang is used by
11 community service officers to present
12 drug and alcohol education programs
13 throughout the Commonwealth.

14 A. If this involves school
15 children I think this was the more
16 appropriate of the expenses. I think
17 if there were any expenses incurred
18 in this investigation they should
19 have been incurred by the FBI.

20 Q. Do you know whether these
21 giveaway vehicles are ever accounted
22 for? People know where they are,
23 what's done with them?

24 A. I don't know because I've
25 never seen any.

1 Q. Have you ever seen museum
2 items for the State Police Museum?

3 A. I donate things to the State
4 Police Historical Education and
5 Museum Committee. I don't know
6 anything --- I don't know where
7 you're going for what you mean.

8 Q. Okay. Where I'm going is you
9 donated --- for example, there was a
10 typewriter that was given to you by a
11 mistake and then you donated it;
12 right?

13 A. I don't know if I ever donated
14 that. I donated a typewriter from
15 the estate of Herm Fialdia
16 (phonetic), yes.

17 Q. Well, the reason I'm asking
18 you is, it was given to you or sold
19 to you, however you acquired it as an
20 individual, and then you gave it to
21 the state police; right?

22 A. I gave it to the Historical
23 Educational and Museum Committee,
24 which is separate from the state
25 police department.

1 Q. Okay. That's the state
2 museum; right?

3 A. No. It's a non-profit
4 organization that's attempting to
5 build a museum for the State Police
6 History Education Research and a
7 memorial center.

8 Q. You have items of a historic
9 significance in your office that
10 could be defined as Pennsylvania
11 state police memorabilia?

12 A. I probably do.

13 Q. Helmets, that kind of thing?

14 A. Yes.

15 Q. They're quite prized items;
16 aren't they?

17 A. Yes, they are.

18 Q. And do you own any of those?

19 A. Yes, I do.

20 Q. How did you acquire them?

21 A. I got one from my father and I
22 got one from the estate of Herm
23 Fialdia.

24 Q. Have you ever been
25 investigated for them?

1 A. No.

2 Q. Do you know whether or not
3 Colonel Coury ever played any role on
4 having Captain Ober investigated for
5 some alleged acquisition of
6 Pennsylvania state police
7 memorabilia?

8 A. I remember listening to
9 somebody's deposition. I think it
10 was that an individual by the name of
11 Phil Conti had wrote a letter of
12 complaint. So I know that.

13 Q. Yes, sir. Did you ever read
14 that letter?

15 A. No, I didn't.

16 Q. So you don't have a view as to
17 whether or not that letter is a
18 letter of complaint?

19 A. I don't know. I haven't read
20 it.

21 Q. Do you know who did the
22 adjudication in Captain Ober's case?

23 A. No, I don't.

24 Q. Do you know if his case was
25 assigned a BPR, what's called a BPR

1 number?

2 A. I don't know.

3 Q. And do you know if he was ever
4 informed of the finding and results
5 in that case?

6 A. If it were a internal affairs
7 investigation I would think that he
8 was.

9 Q. You would think that he was.
10 Do you know if he was, sir?

11 A. No, I don't.

12 Q. Sir, do you know whether he
13 was ever informed of the results of
14 the investigation that you ordered
15 Majors Williams and Wertz to do?

16 A. I know that after I discussed
17 my conclusions with Lieutenant
18 Colonel Hikus, that Lieutenant
19 Colonel Hikus advised Captain Ober.
20 And I know from Lieutenant Colonel
21 Hikus' deposition earlier this week.

22 Q. Prior to Lieutenant Colonel
23 Hikus testifying in the manner that
24 he did about that issue, had you any
25 knowledge of Captain Ober being told

1 anything about that investigation
2 being closed?

3 A. I didn't know, but I expected
4 that Lieutenant Colonel Hikus would
5 do that because Captain Ober was
6 under his chain of command.

7 Q. Well, do you know if
8 Lieutenant Colonel Hikus was given
9 the investigation, or given a copy of
10 the investigation?

11 A. No, sir, he was not.

12 Q. Do you know if the same is
13 true of the museum investigation?

14 A. As to whether ---?

15 Q. If Colonel Hikus was given a
16 copy of that?

17 A. I don't know.

18 Q. Okay. Are there any current
19 BPRs into Captain Ober?

20 A. Not that I'm aware of.

21 Q. Going back, though, I'm going
22 to change a little bit the direction
23 we've been going here. And I want to
24 ask you some questions, some calendar
25 questions about when things --- when

1 you made decisions about Captain
2 Ober. You had already testified that
3 you never gave whether or not he
4 violated a regulation another thought
5 after you learned that Hikus had
6 ordered him not to say anything. And
7 you've indicated that the primary
8 concern you had in finding out about
9 the facts and circumstances of the
10 FBI probe had to do with Colonel
11 Hikus' behavior and activities. Have
12 I misstated anything?

13 A. You misstated the first part.
14 It was after I had advised Colonel
15 Hikus of my conclusions where I made
16 the comment that I didn't give much
17 of a thought to Captain Ober after
18 that.

19 Q. Okay. And when was that?

20 A. Sometime around Labor Day or
21 the last week of August, something
22 like that.

23 Q. 1999?

24 A. Of 1999.

25 Q. Okay. Sometime in April 1999,

1 you appointed Captain Ober to IIMS;
2 right?

3 A. I detached him from the Bureau
4 of Professional Responsibility to the
5 Bureau of Technology Services to work
6 on the IIMS project.

7 Q. Now, IIMS, very, very briefly
8 --- we have enough on the record, I
9 think, to know what it is. Why did
10 you put Captain Ober there?

11 A. Because I thought he would do
12 a good job in that assignment.

13 Q. And do you know what kind of
14 role he played with that assignment?

15 A. He was the team leader to
16 develop the selection criteria for
17 the systems integrator for Phase 1,
18 the 13-month project to design
19 the ---.

20 Q. Keep your voice up just a wee
21 little bit.

22 A. To design the integration of
23 all the other teams that were working
24 on the mobile office, the mobile
25 applications team, the AVL, the GIS,

1 the CAD, the CAD system, the
2 consolidated dispatch centers.

3 Q. How much was IIMS when it was
4 all completed, going to cost the tax
5 payer, roughly?

6 A. Just the IIMS program?

7 Q. Roughly.

8 A. \$100 million. And that
9 would've included all the building
10 sites for the consolidated dispatch
11 centers, all the telephone, the new
12 telephone equipment, all of the
13 computers, all the personnel. And
14 that was just the one phase of the
15 automation project.

16 Q. Now, when you appointed
17 Captain Ober to the IIMS assignment,
18 you made an agreement with him;
19 didn't you?

20 A. Yes, I did.

21 Q. And tell us quickly, sir, what
22 was that agreement?

23 A. I agreed to return him to the
24 Bureau of Professional Responsibility
25 upon completion of his assignment.

1 Q. And Captain Ober felt strongly
2 about that; didn't he?

3 A. Well, he wanted to go back to
4 the Bureau of Professional
5 Responsibility, yes.

6 Q. And you had no difficulty with
7 that, because you believed in Captain
8 Ober; didn't you?

9 A. It was the agreement that I
10 made with him.

11 Q. You believed in him, you felt
12 that he was a fine and capable
13 Pennsylvania State Police officer;
14 didn't you, sir?

15 A. When I made that assignment,
16 yes, I did.

17 Q. When you made that assignment
18 you did?

19 A. Yes.

20 Q. And you placed in writing a
21 commitment to return him, him being
22 Captain Ober, to IAD at the
23 completion of his IIMS attachment
24 from the Bureau of Professional
25 Responsibility, the internal affairs

1 division to IIMS; correct? You put
2 that in writing?

3 A. There is a clean message to
4 that effect.

5 Q. Now, the assignment that you
6 made of Captain Ober to IIMS was it
7 on April 26, 1999; wasn't it?

8 A. Yes, sir.

9 Q. And Captain Ober and
10 Lieutenant Colonel Hikus came in and
11 they told you about this FBI probe,
12 which of course the FBI hadn't
13 informed you of and which Colonel
14 Hikus and Captain Ober had not
15 informed you of and you didn't learn
16 about. They informed you about it on
17 May 12th, 1999; correct?

18 A. That is correct.

19 Q. And your testimony here today
20 indicates that you told Lieutenant
21 Colonel Hikus something to the
22 effect, that the investigation that
23 you had ordered was over sometime on
24 or about Labor Day of 1999; right?

25 A. That is correct.

1 Q. With the expectation that
2 Lieutenant Colonel Hikus, and you
3 said was in Captain Ober's chain of
4 command, would tell Captain Ober?

5 A. That is correct.

6 Q. Well, did you tell Colonel
7 Conley?

8 A. Did I tell him what?

9 Q. About the investigation being
10 over?

11 A. No, I did not.

12 Q. Why not?

13 A. Because Captain Ober was
14 detached to the Bureau Technology
15 Services under the command of
16 Lieutenant Colonel Hikus.

17 Q. On or about November 8th,
18 1999, did Captain Ober file a
19 grievance of some type?

20 A. On what date?

21 Q. I believe November 8th. And
22 then another on December 22nd, 1999?

23 A. I know that he filed
24 grievances, I don't know what the
25 dates are.

1 Q. Fact is, you have a standing
2 order as Commissioner, you know what
3 grievances are filed. You're
4 informed of that; isn't that correct?

5 A. No, that is not correct. I am
6 not informed of them.

7 Q. What about EEOC complaints, if
8 somebody complains about an issue of
9 race or invidious discrimination?

10 A. If it results in a internal
11 affairs investigation normally it
12 would be reported on a weekly report
13 of significant BPR issues.

14 Q. Well, at some point you had
15 made a decision that Captain Ober was
16 to go to Washington County; right?

17 A. Yes, I did.

18 Q. And when did you decide that?

19 A. Sometime in late December or
20 early January of 2002 --- December of
21 '99 and January of 2000, January
22 2000.

23 Q. And why did you do that?

24 A. Because Colonel Wescott was
25 asking for someone to assist Major

1 Zipinka in preparation for the
2 National Governors' Association.

3 Q. Why Captain Ober?

4 A. He was finishing up his
5 assignment with IIMS, he was
6 available, and Major Conley had asked
7 for him not to be returned to the
8 Bureau of Professional
9 Responsibility.

10 Q. When did ---?

11 A. And he could do the job.

12 Q. And he could do the job. When
13 did Mr. Conley first tell you he
14 didn't want Mr. Ober back?

15 A. I think Lieutenant Colonel
16 Coury told me first. And it would've
17 been end of December, beginning of
18 January.

19 Q. Well, did you bring Captain
20 Ober in and discuss that with him?

21 A. No, I didn't.

22 Q. Any reason why not?

23 A. I treated him the same way
24 that I treated Captain Transue.

25 Q. Captain Transue's down around

1 Philadelphia?

2 A. That's where she is now, yes.

3 Q. Yes. But where was she when
4 you moved her out?

5 A. She was in the Bureau of
6 Research and Development.

7 Q. And you sent her where?

8 A. To Philadelphia.

9 Q. For what reason?

10 A. To assist in the preparation
11 of the troops for the Republican
12 National Convention.

13 Q. Is that similar to the
14 treatment that Captain Young
15 received? How was that --- I'm
16 sorry.

17 A. Go ahead finish your question.

18 Q. How was Captain Young handled?

19 A. In what way.

20 Q. Was he transferred at all?

21 A. Yes. After the injunction was
22 filed I assigned Captain --- I
23 promoted Captain Young and
24 transferred him to Major Zipinka to
25 assist in the final preparations of

1 the National Governors' Association.

2 Q. Well, now, Captain Ober had
3 filed a couple of grievances with
4 them; right?

5 A. It's my understanding that he
6 did.

7 Q. November and December; is that
8 correct?

9 A. I don't know when.

10 Q. In one of those grievances did
11 he write in the grievance that there
12 was an issue of retaliation?

13 A. I don't know, because I've
14 never read them.

15 Q. Well, do you know when Captain
16 Ober was informed, first informed,
17 that he was going to Washington?

18 A. I would imagine the beginning
19 of January.

20 Q. Do you know who told him?

21 A. It would have either been
22 Lieutenant Colonel Hikus or Major
23 Conley, one of the two, or Major Walp
24 (phonetic). I think it was Major
25 Walp that told him.

1 Q. Major Walp say anything to you
2 about moving Captain Ober?

3 A. After Lieutenant Colonel Hikus
4 told me that Captain Ober's
5 assignment was done, Major Walp did
6 ask if he could be retained on the
7 IIMS assignment.

8 Q. Now, at some point did you
9 tell Captain Ober that he was going
10 to be leaving IIMS?

11 A. No, I didn't.

12 Q. Well, did you cause somebody
13 to tell him that?

14 A. I would have told either
15 Lieutenant Colonel Hikus --- probably
16 Lieutenant Colonel Hikus.

17 Q. Now, did Colonel Conley, by
18 this time I guess he's a Colonel,
19 did Colonel Conley inform Mr. Ober on
20 or about January 10th that he was
21 going out to Washington?

22 A. It would've either been
23 Lieutenant Colonel Hikus or Major
24 Conley, one of the two.

25 Q. So who consulted with you ---

1 you said it was Wescott who consulted
2 with you about this need out in
3 Washington, Pennsylvania?

4 A. Yes, sir.

5 Q. What other captains did you
6 consider?

7 A. I don't think I considered any
8 other captains. Because Captain Ober
9 was available, I knew he could do the
10 job and his assignment with the IIMS
11 project was done.

12 Q. Was it done?

13 A. Yes.

14 Q. When did they vote on it?

15 A. I do not know.

16 Q. Why wouldn't you know that
17 before you reassigned him somewhere
18 else?

19 A. Because I asked Lieutenant
20 Colonel Hikus if he was done and he
21 told me he was.

22 Q. Now, Lieutenant Colonel Hikus
23 told you that at that time?

24 A. The end of December or the
25 beginning of January.

1 Q. Did you discuss Lieutenant
2 Colonel Hikus' testimony with him
3 before he testified the other day?

4 A. No, I did not.

5 Q. Did Captain Ober ever return
6 to IAD?

7 A. No, he did not.

8 Q. Why not ---?

9 A. Or he may have returned for a
10 couple days because I did not
11 transfer him back there or if I did
12 it was for a short period of time.

13 Q. Well, when did you learn that
14 he had filed an action against the
15 department?

16 A. I'm not sure when that was.

17 Q. Was it on or about the 26th of
18 January?

19 A. I don't know.

20 Q. 2000?

21 A. I don't know.

22 Q. Well, what was to be his
23 effective date to go back to IAD?

24 A. I'd have to look at a
25 personnel order. I don't recall.

1 Q. Well, hadn't you initially
2 assigned him to go back to IAD?

3 A. At the conclusion of his
4 assignment to Bureau of Technology
5 Services?

6 Q. Yes. In other words, sir,
7 hadn't you assigned him back to IAD
8 for like a week or five days or some
9 such thing?

10 A. I think it was going to be one
11 full pay period.

12 Q. And what's a full pay period?

13 A. Two weeks.

14 Q. Two weeks. Why did you do
15 that?

16 A. The formality of doing it.

17 Q. Sorry. The formality of doing
18 it, sir?

19 A. Yes.

20 Q. You weren't doing it to slap
21 him in the face; were you, Colonel?

22 A. No, I wasn't.

23 Q. You weren't doing it to insult
24 him; were you?

25 A. No, I wasn't.

1 Q. You were not doing it to send
2 him a message; were you?

3 A. No, I wasn't.

4 Q. You weren't doing it to teach
5 Mr. Hikus a lesson; were you?

6 A. Pardon me?

7 Q. You weren't doing it to teach
8 Mr. Hikus a lesson; were you?

9 A. No, I was not.

10 Q. You weren't doing it to punish
11 Captain Ober; were you?

12 A. No, I was not.

13 Q. So you, sir, were going to
14 take this career captain in the
15 Pennsylvania State Police who you
16 told us just previously here was a
17 fine officer to do the job. And as
18 Colonel Coury said and you have now
19 confirmed, it was you who made this
20 decision?

21 A. Yes, it was.

22 Q. All by your lonesome with some
23 input from Mr. Wescott, the gentleman
24 that flew up to see Mr. Williams and
25 informant of the decision to

1 investigate the events of October 5th
2 of 1998 and what followed. For
3 purposes of the mere formality of it
4 you were going to assign Captain Ober
5 to one or two weeks, you said a pay
6 period, with IAD before you sent him
7 out to Washington to help with the
8 National Governors' Conference, was
9 that it?

10 A. That's it.

11 Q. If I represented to you that
12 to the best of my knowledge, it was
13 January 26th, 2000, that Mr. Ober
14 made known a legal action that he
15 filed in Commonwealth court against
16 the Pennsylvania State Police seeking
17 prospective relief, are there any
18 facts known to you that contradict
19 that as you sit here today?

20 A. Do you mean contradict when he
21 filed the injunction?

22 Q. Yes, sir.

23 A. Not that I'm aware of.

24 Q. When did you make a decision
25 that he would sit tight at IIMS

1 detached from BPR, IAD division and
2 not go to Washington?

3 A. Probably after the injunction
4 was filed.

5 Q. Sir, wasn't that after the
6 report date that you had given him to
7 IAD for the formality of just being
8 there for a short while, sir?

9 A. I don't know what that date
10 is, so I don't know.

11 Q. You needed him at IIMS; didn't
12 you?

13 A. To complete that project, yes
14 sir.

15 Q. Yes, sir, you did. Yes, sir.
16 I agree with that. And Mr. Ober
17 never actually went back to IAD; did
18 he, sir?

19 A. I don't believe that he did.

20 Q. And, sir, he never went to
21 Washington; did he?

22 A. He did not.

23 Q. Now, did he not go to
24 Washington because you are a
25 compassionate man?

1 A. He did not go to Washington
2 because of the injunction and the
3 settlement of the injunction.

4 Q. Why did you settle it, sir?

5 A. Because I didn't want to
6 prolong the assignment of an
7 individual to assist Major Zipinka.
8 Lieutenant Colonel Wescott was
9 insistent that somebody get out there
10 as soon as possible. He wanted
11 somebody out there helping him. And
12 you have to remember that at the
13 beginning of December, Seattle
14 exploded with the World Trade
15 Organization demonstrations. States
16 of emergency were declared, the
17 National Guard was called out, the
18 curfews were imposed and Colonel
19 Wescott was insistent that we not be
20 caught in the same situation that
21 Seattle PD was caught in.

22 Q. What's that have to do with
23 Captain Ober? Mr. Coury's come in
24 here and testified for about a half
25 hour, and then we got into some

1 different things, but --- about how
2 this gentleman, Captain Ober, was
3 operationally deficit experience
4 wise, not ability wise, but
5 experience wise. So how does that
6 integrate with this alleged need
7 because of Seattle in Washington?

8 A. Colonel Coury was not Deputy
9 of OPS at that time, Colonel Wescott
10 was. And it was Colonel Wescott's
11 recommendation with my concurrence
12 that the captain go there, that he
13 could do that job working with Major
14 Zipinka.

15 Q. Okay. Fair to say then that
16 Mr. Wescott may not, I mean, we can
17 only speculate, I guess, but
18 apparently did not entertain
19 viewpoints as to Captain Ober's
20 alleged operational deficiencies,
21 that he didn't feel that way about
22 Captain Ober or he wouldn't have
23 recommended him for that assignment?

24 A. I'm not sure what he testified
25 to, what his thoughts were. It seems

1 to me that they're consistent with
2 Lieutenant Colonel Coury's.

3 Q. He wanted to get his --- he
4 wanted Captain Ober to get his feet
5 wet in a combat situation then; is
6 that right?

7 A. He needed somebody out there
8 to work with Major Zipinka to make
9 sure that what happened in Seattle,
10 at least that's my understanding and
11 my feeling, as to what happened in
12 Seattle didn't happen in State
13 College.

14 Q. You mean Pittsburgh, or ---
15 oh, it was State College.

16 A. State College.

17 Q. Well, say Zipinka was really
18 fired up, needed somebody?

19 A. No. This was Lieutenant
20 Colonel Wescott's decision.

21 Q. Yes, but didn't you say
22 Zipinka really needed somebody or did
23 I misunderstand?

24 A. Zipinka needed somebody
25 according to Lieutenant Colonel

1 Wescott's estimation.

2 Q. Oh, okay. So Zipinka wasn't
3 making this demand or anything like
4 that? It was Colonel Wescott's
5 opinion that he needed him?

6 A. It was Colonel's Wescott's
7 opinion.

8 Q. So you promoted Young and put
9 Young out there?

10 A. Yes, I did.

11 Q. And when did you promote Mr.
12 Young to Captain? He was a
13 lieutenant; right?

14 A. Yes, he was. Probably
15 sometime in January.

16 Q. And you sent him out there.
17 Did he want to go?

18 A. I don't know whether he wanted
19 to go or not.

20 Q. Well, did you talk to him at
21 all before he went?

22 A. I normally talk to officers
23 that I promote. If I talked to him I
24 would have offered him the position
25 of captain with the caveat that it

1 would be assigned to Major Zipinka to
2 help out there.

3 Q. That's what I mean. That's
4 what I'm asking about.

5 A. And I probably would have
6 talked to him, but I'm not sure.

7 Q. Okay. Colonel, are you
8 telling me that if you'd have talked
9 to Mr. Young and Mr. Young had said,
10 not yet, don't want to do that, would
11 you have still promoted him and sent
12 him to Washington against his wishes?

13 A. I would not have promoted him,
14 no.

15 Q. Okay. Darrell Ober files his
16 injunction. Did that upset you?

17 A. No.

18 Q. How did you feel about it?

19 A. Neutral.

20 Q. Why did you relent and agree
21 to settle on it?

22 A. We settled this case because I
23 didn't want to prolong the
24 assignment, somebody going out to
25 assist Major Zipinka. I didn't know

1 how long that court case might take.
2 Q. Okay. See, I understand that
3 and I understand you testified to
4 that and I wasn't sure I heard you
5 right. But I don't understand why
6 the one requires the other one. In
7 other words, I can understand the
8 following. This captain, Captain
9 Ober, files this injunctive thing
10 about being transferred out there.
11 Okay? You don't want to prolong the
12 problem. Why does agreeing with his
13 injunction have anything to do with
14 prolonging the problem if you're
15 going to get somebody else for it
16 anyway?

17 In other words, you know, go
18 ahead and fight the injunction and
19 win. It doesn't mean you have to
20 send him, but you can certainly win
21 the legal action being that you can't
22 be prevented from doing it. It
23 doesn't mean you have to go through
24 with it. I don't understand why
25 settling that would solve your

1 problem with the National Governor's
2 Conference.

3 A. I wasn't going to put on hold
4 sending somebody out there to work
5 with Major Zipinka.

6 Q. Of course not. You don't even
7 know how long the legal wrangling
8 will take.

9 A. And that's the point of my
10 answer.

11 Q. I still don't understand but I
12 understand that's your answer. I
13 don't understand why --- that's your
14 answer, that's your answer.

15 A. It's the best I can articulate
16 it.

17 Q. Yes, sir. Sir, did Captain
18 Ober argue that the transfer was
19 punitive in nature?

20 A. Not that I know of.

21 Q. Do you think it was punitive
22 in nature?

23 A. No.

24 Q. Do you think it was a career
25 enhancing move?

1 A. I didn't look at it either
2 way, as career enhancing or not. I
3 knew there was need out there and I
4 agreed with Colonel Wescott.

5 Q. You don't have a duty to, at
6 all, look at officers in terms of
7 career enhancement? You look at it
8 in terms of what the needs of the
9 Pennsylvania State Police are; right?

10 A. That's exactly what I did.

11 Q. And you're telling us that
12 Ober was needed out there because
13 according to you the IIMS thing had
14 come to a conclusion, which you say
15 you got from Hikus; right?

16 A. That is correct.

17 Q. So he's available?

18 A. That is correct.

19 Q. Well, after you decided not to
20 prolong the legal thing and gave in
21 --- is it fair to say you gave in on
22 the legal thing?

23 A. I think we settled the
24 injunction.

25 Q. Those words are --- you

1 settled the injunction. You choose
2 your words. You settled the
3 injunction. And after you settled
4 the injunction Ober's still
5 available; right?

6 A. Yes, he was.

7 Q. So you put him in a
8 lieutenant's position in LCE; didn't
9 you?

10 A. I have a major that is the
11 director of the Bureau of
12 Professional Responsibility that had
13 asked that he not be returned there.
14 And I did the same thing with Captain
15 Ober that I did with Captain Transue.

16 Q. Put him into a lieutenant's
17 position?

18 A. Captain Transue was not
19 reassigned to Bureau of Research and
20 Development because Lieutenant
21 Colonel Hikus asked that she not be
22 reassigned there.

23 Q. Sir, Colonel Evanko, aside
24 from Captain Ober I want you to tell
25 me how many times in your career as

1 Commissioner of the Pennsylvania
2 State Police you placed a captain
3 --- because the testimony has been
4 that you made this decision, how many
5 times have you placed a captain in a
6 lieutenant's position? Tell us.

7 A. Only one.

8 Q. Who?

9 A. Captain Ober.

10 Q. Yes, sir, that's correct.

11 A. And it was consistent with the
12 court's decision to keep him in the
13 Harrisburg/Hershey area and there
14 were no captain vacancies in the area
15 at that time.

16 Q. Well, I may be mistaken but
17 your counsel said --- I mean, they
18 represented at least that you didn't
19 lose that thing. Yu actually won it,
20 you just settled it or something. I
21 don't know what the words are, but
22 you didn't lose it.

23 ATTORNEY GUIDO:

24 It was dismissed as
25 moot and it's a matter of

1 public record. You can read
2 the court opinion. The court
3 dismissed the case as moot.
4 It was the preliminary
5 injunction that was settled.
6 There was no permanent
7 injunction settled, and it was
8 dismissed as moot.

9 BY ATTORNEY BAILEY:

10 Q. So you're saying --- well,
11 you've heard what your learned
12 attorney just said here. Your
13 position is that that's consistent
14 with what the court wanted? Is that
15 the way you looked at it? I go back
16 to Dan Pellegrini, to Judge
17 Pellegrini, and I say, sir, you
18 wanted Ober kept in Harrisburg so bad
19 that you felt he should have been
20 assigned to a lieutenant's position
21 as a captain in LCE; is that correct?

22 ATTORNEY GUIDO:

23 I object to the
24 question because it totally
25 misconstrues the facts, which

1 the court never entertained
2 anything in the case. The
3 matter was settled, it's of
4 record. The matter was
5 settled with the Defense
6 Counsel and with the
7 Plaintiff's Counsel, who we
8 agreed that temporary
9 injunction would not be going
10 forward because we would keep
11 the Captain in the Harrisburg/
12 Hershey area as a matter of
13 public record. And your
14 question is misconstruing
15 those facts.

16 BY ATTORNEY BAILEY:

17 Q. Okay. So it wasn't something
18 that the court wanted, it was
19 something that Mr. Ober wanted?

20 A. I just know that there was an
21 agreement to keep him in the
22 Harrisburg, Hershey area.

23 Q. So you don't know whether it
24 was something the court wanted?

25 A. I thought it was something

1 that the court wanted, but maybe not.

2 Q. What's PEMA, FEMA, LEMA ---

3 PEMA, Pennsylvania Emergency
4 Response, or something or other, what
5 is that?

6 A. Pennsylvania Emergency
7 Management Agency.

8 Q. I forgot the acronym, I'm
9 sorry. Do you have a recollection of
10 Captain Ober ever serving with that
11 particular agency?

12 A. I have a recollection from
13 listening to Lieutenant Colonel
14 Wescott's testimony and your
15 questioning of him, but that's all.

16 Q. All right. Colonel Evanko,
17 prior to testimony that you've heard
18 in this case, do you have any
19 recollection of Captain Ober
20 requesting or performing in an
21 assignment to PEMA?

22 A. No, only through your
23 questioning of Lieutenant Colonel
24 Wescott.

25 Q. Have you ever discussed

1 Captain Ober with Mr. Washington?

2 A. No, I have not.

3 Q. I'm sorry, sir. Leonard
4 Washington, do you know who I'm
5 talking about?

6 A. I think you're talking about
7 Major Washington?

8 Q. Yes, sir, I am.

9 A. No, I have not.

10 Q. Colonel, from an assignment
11 standpoint, like a responsibility
12 standpoint, was it Colonel Wescott
13 who was responsible for PEMA?

14 A. It falls under the Lieutenant
15 Colonel of Operations, and Lieutenant
16 Colonel Wescott was in that position
17 in January of 2000.

18 Q. Okay. So at the times
19 complained of in the complaint it was
20 Lieutenant Colonel Wescott who was in
21 that position?

22 A. As Deputy Commissioner of
23 Operations, that's correct.

24 Q. Well, I'm going to change just
25 a little bit, just a couple little

1 things here. Do you have an auto
2 pen?

3 A. Yes, I do.

4 Q. How does it work? It signs
5 your signature; right?

6 A. Yes, it does.

7 Q. Can you describe it for me?
8 You put a piece of paper in it and it
9 signs your name or something?

10 A. I'm not sure that I've ever
11 seen it operated, but I know that you
12 put a piece of paper down and it
13 traces your signature. That's it.

14 Q. Have you ever had occasion to
15 handle any documents that it signed?

16 A. I would probably get copies of
17 documents like that.

18 Q. How many shirts have you lost
19 due to being smeared by the ink on
20 your auto pen?

21 A. Pardon me?

22 Q. Ever lost any shirts as a
23 result of getting smeared with ink
24 from your auto pen?

25 A. I don't know of any that I've

1 ever lost.

2 Q. Ever handle documents from
3 your auto pen, gotten ink on your
4 hands?

5 A. I don't think. I never did
6 that, no.

7 Q. Sir, what's the name of your
8 secretary?

9 A. Mary Bungo.

10 Q. Can you describe for us the
11 duties that she performs for you.
12 And after you do that, can you tell
13 us what authority she has to make
14 decisions for you?

15 A. She is my confidential
16 executive secretary and also acts in
17 the capacity of an executive officer.
18 She has the authority to route
19 complaints to decide who will answer
20 certain letters of complaint, for
21 example. She has the authority to
22 auto pen certain documents, to
23 respond, schedule, to call
24 legislators. She has a wide range of
25 authority.

1 Q. Does she have the authority to
2 decide the organizational structure
3 of the Pennsylvania State Police?
4 You gave her that authority; didn't
5 you?

6 A. Tell me what you mean.

7 Q. Didn't you give Mary Bungo the
8 authority to decide, make the final
9 decision, on how the Pennsylvania
10 State Police will be organized and
11 function?

12 A. No.

13 Q. Are you sure about that?

14 A. Yes.

15 Q. Well, do you ever get
16 presented with changes for
17 Pennsylvania State Police
18 regulations?

19 A. Yes.

20 Q. How do you process those? I
21 don't care about the rest of the
22 organization, I want to know how
23 Colonel Evanko processes them.

24 A. I will get them in final
25 format signed off by either the

1 appropriate deputy or all three
2 deputies, review it and if I agree
3 with it, sign it.

4 Q. Mary Bungo doesn't have the
5 authority to make that decision for
6 you?

7 A. She has the authority of the
8 deputy commissioners have already
9 signed off on it and I'm not
10 available to auto pen it.

11 Q. Now, after the three have
12 signed off on it, then it comes to
13 you?

14 A. Yes.

15 Q. What if it goes back to R&D
16 for some kind of change, do you
17 double-check it?

18 A. Do I double-check it before it
19 comes back or after it comes back?

20 Q. Well, here's my question. If
21 the three commissioners or three
22 deputies --- you have three deputies?

23 A. Yes, I do.

24 Q. They're lieutenant colonels?

25 A. That's correct.

1 Q. If they sign off on an R&D
2 proposal, do they have the authority
3 to send it back without you seeing
4 it?

5 A. Yes, they do.

6 Q. Which one of them does?

7 A. It would depend on whose
8 jurisdiction it fell under. If it
9 were an operational decision, Deputy
10 of Operations, or staff, Lieutenant
11 Colonel Hikus. Primarily it would be
12 Lieutenant Colonel Hikus
13 responsibility because the Bureau of
14 Research and Development falls under
15 his authority.

16 Q. Now, if they go back and they
17 change it and then it comes back to
18 you, you review it? Or does Mary
19 Bungo review it?

20 A. If I make a change to it?

21 Q. Yes.

22 A. Then it would come back to me.

23 Q. Who's Sharon? Do you know who
24 Sharon is in Research and
25 Development?

1 A. It is probably the secretary
2 to the Director of Bureau Research
3 and Development.

4 Q. Are you familiar with AR-1?

5 A. Yes, I am.

6 Q. When's the last time it was
7 changed, that you know of?

8 A. I know from these proceedings
9 that it was changed within the past
10 year.

11 Q. Well, let's forget these
12 proceedings. What do you know of its
13 being changed excluding these
14 proceedings?

15 A. I don't of any other than
16 through these proceedings.

17 Q. Colonel, didn't you sign a
18 change order or did you sign a change
19 order regarding AR-1, adding AR-1.102
20 subsection C? Did you add that?

21 A. What is it?

22 Q. It has to do with chain of
23 command.

24 A. No, I did not.

25 Q. Who did, sir?

1 A. It was auto-pen need.

2 Q. On your authority?

3 A. No.

4 Q. Whose authority?

5 A. The three deputy
6 commissioners.

7 Q. If that regulation up for a
8 change was sent back, was resubmitted
9 on January 19th, '01 to R&D and then
10 received for corrections back to R&D
11 on February 12th, '01, resubmitted to
12 the front office on February 22nd,
13 '01 and then sent back signed with a
14 repo order on February 27, '01, as
15 you sit here today, you'd have to
16 say, Mr. Bailey, I really don't know
17 anything about that. You don't
18 really know; do you?

19 A. I don't recall knowing
20 anything about that other than
21 through these procedures.

22 Q. Sir, was AR-101 subsection C
23 required for accreditation purposes
24 for the --- sorry, sir. Sometimes I
25 get saved from my own question.

1 Colonel Evanko, I believe we've had
2 some representations from somebody in
3 this litigation, I'm not sure who at
4 this stage, that subsection C of
5 AR-1.102 was needed for accreditation
6 purposes having to do with the
7 National Group. I'm pretty familiar
8 with that. I've worked on that quite
9 a bit. I don't know of that need.
10 Can you help me?

11 A. I don't know of that need
12 either.

13 Q. You have a reputation
14 nationally, do you not, and certainly
15 in Pennsylvania for being very
16 concerned about PSP credentials and
17 about their accreditation to come up
18 to high standards? I think you're
19 well known for that; is that fair to
20 say?

21 A. I think the department is well
22 known, I don't know if I'm well known
23 for it.

24 Q. I think you are, I think it's
25 to your credit. But the point is,

1 and let's forget you, the department
2 is well known, even nationally, for
3 wanting to meet very high
4 accreditation standards to be known
5 as proficient and efficient and
6 highly qualified, that kind of thing,
7 as a law enforcement agency; isn't
8 that fair to say?

9 A. I think that's fair to say.

10 Q. And isn't it fair to say that
11 it's one of your top priorities, one
12 of your top concerns, because
13 obviously it means a great deal
14 about the quality of the State
15 Police. Isn't that fair to say?

16 A. It's important to me, my top
17 concern is the safety of my troopers.

18 Q. All right. But secondary to
19 the safety of the troopers, that
20 quality control image, credentials,
21 capability, those things are high
22 standards, you set; right?

23 A. I would say that they're in
24 the top group of what I expect.

25 Q. So you don't know of

1 subsection C being an accreditation
2 requirement?

3 A. I don't know.

4 Q. Now, subsection C, do you know
5 what I'm talking about?

6 A. From you describing it and
7 from these actions.

8 Q. Okay. Now, sir, I'm going to
9 ask a series of questions. I want to
10 let you know where I'm going right
11 now because they're very, very
12 important to this litigation as the
13 Plaintiff sees it. And they're going
14 to have to do a subsection C and
15 they're going to have to do with this
16 process of changing and approving
17 AR-1, approving changes to it; okay?
18 Now, I want to be very careful of
19 some of the dates and some of the
20 sequences of events here. When did
21 you first become aware of subsection
22 C? Was it during this litigation?

23 A. Yes.

24 Q. Does Ms. Bungo or anyone in
25 your office give you a list at some

1 time --- I used to be auditor
2 general, I used to be a congressman.
3 I used to --- my people, from time to
4 time, were authorized to do different
5 things on a daily basis and provided
6 me with a list of things that we did,
7 of our office product. I assume, as
8 a Commissioner of the Pennsylvania
9 State Police, you are told at
10 periodic times, daily, weekly,
11 whatever, Colonel, we did this, you
12 authorized this, you authorized that,
13 because you can't obviously, sir, you
14 can't do everything. The fact is you
15 just can't do everything and
16 micromanage everything in a day;
17 correct?

18 A. That's correct.

19 Q. Do you get a list from staff
20 on what you authorize or what you do
21 on like a daily or weekly or monthly
22 basis?

23 A. No.

24 Q. Do you sit down and talk with
25 Mary Bungo about what goes out under

1 your signature?

2 A. I sit down and talk not only
3 her, but also the deputy
4 commissioners on a whole host of
5 things.

6 Q. Did Colonel Coury tell you
7 about subsection C before you heard
8 about it in this litigation?

9 A. This is the first time I heard
10 about it, during this litigation.

11 Q. Okay. So the answer is that
12 none of the lieutenant colonels, the
13 staff people, the three top staff
14 people told you about it and you
15 heard about it first, subsection C,
16 in this litigation?

17 A. That is a correct statement.

18 Q. Colonel Evanko, would you be
19 kind enough, sir, to look at this
20 document for me? As soon as your
21 attorneys are done, take a moment to
22 look at it.

23 ATTORNEY BAILEY:

24 In fact, while they're
25 looking can we suspend for one

1 minute so I can get some
2 water?

3 VIDEOGRAPHER:

4 It's 2:32 p.m., we're
5 going to suspend and we're
6 going to change tapes.

7 SHORT BREAK TAKEN

8 MR. SOLOMON:

9 2:37, back on record,
10 tape three.

11 ATTORNEY BAILEY:

12 Let the record show
13 we're back on the ---.

14 VIDEOGRAPHER:

15 It's 2:39 p.m., new
16 tape, on March 27th, 2002,
17 the deposition of Mr. Evanko.

18 BY ATTORNEY BAILEY:

19 Q. Colonel, I just showed you and
20 your attorneys have looked at a
21 multi-page document.

22 ATTORNEY GUIDO:

23 We need it marked.

24 BY ATTORNEY BAILEY:

25 Q. Is it fair to say that you

1 don't know what ---?

2 ATTORNEY GUIDO:

3 Before he answers any
4 questions, we want the exhibit
5 marked.

6 ATTORNEY BAILEY:

7 Let me finish.

8 ATTORNEY GUIDO:

9 Colonel, don't answer
10 until the exhibit is marked.

11 ATTORNEY BAILEY:

12 Let me finish.

13 BY ATTORNEY BAILEY:

14 Q. Is it fair to say that you
15 don't know what this document is?

16 ATTORNEY GUIDO:

17 Do not answer until the
18 document has been marked.

19 BY ATTORNEY BAILEY:

20 Q. Colonel Evanko, we've been
21 given a document that indicates that
22 you did an e-mail to a gentleman
23 named Mark Campbell; is that correct?

24 A. Yes, I gave that to you.

25 Q. And it says one, two, three,

1 fourth paragraph down, I am
2 transferring Captain Darrell Ober
3 effective 28 January 2000; do you
4 remember that?

5 A. Yes, I do.

6 Q. Why were you telling Mark
7 Campbell?

8 A. Because I was keeping him up
9 to date with preparations for the
10 National Governors' Association. And
11 I had told him that I was going to
12 send somebody out to assist Major
13 Zipinka in the planning for that
14 event because it was so big.

15 Q. Okay. So you had discussed
16 Captain Ober with Mark Campbell?

17 A. I told him that I was going to
18 send Captain Ober out there to help
19 Major Zipinka.

20 Q. Did he know who Captain Ober
21 was?

22 A. I'm not sure that he did.

23 Q. Was he interested in who was
24 going out there?

25 A. I don't know if he was

1 interested in so much as I was just
2 trying to keep him up to date.

3 Q. Well, did he ever express an
4 interest in the kind of person you
5 wanted out there or what you wanted
6 them to do?

7 A. No.

8 Q. Well, you said you're
9 transferring Captain Ober out there,
10 he knew who Captain Ober was?

11 A. He probably did because I
12 would have talked to him about
13 somebody going out there to assist
14 and that was probably going to be
15 Captain Ober.

16 Q. Well, you talked to him about
17 Captain Ober early on, hadn't you,
18 when the issue came up concerning the
19 FBI probe?

20 A. I probably did use both
21 Captain Ober's name and Lieutenant
22 Colonel Hikus.

23 Q. Now, have you asked Mr.
24 Campbell whether or not you could or
25 should investigate the matter?

1 A. No, I did not.

2 Q. So your testimony is that Mr.
3 Campbell provided no input as to
4 whether or not this matter should be
5 investigated?

6 A. No, he did not provide any
7 input.

8 Q. Did you find out at some point
9 that Mr. Hikus had talked to somebody
10 in the Governor's Office about this?

11 A. Through his testimony, I did.

12 Q. And you didn't know about it,
13 I think you testified earlier today
14 that you didn't know about it before
15 that?

16 A. That is correct.

17 Q. Do you think it was
18 inappropriate for him to do that?

19 A. Before he talked to me?

20 Q. Yes.

21 A. Yes.

22 Q. So he should not have talked
23 to Mary Woolly before he talked to
24 you; right?

25 A. Yes.

1 Q. Now, do you know whether Mary
2 Woolly had told Mr. Campbell anything
3 about the discussions that she had
4 with Mr. Hikus? Do you know whether
5 Mary Woolly told Mr. Campbell
6 anything about any conversations she
7 may have had with Mr. Hikus?

8 A. I do not know.

9 Q. Have you talked with Mr.
10 Campbell since then?

11 A. I'm sure that I have talked to
12 him since then.

13 Q. Have you talked to him since
14 then about this matter?

15 A. No, I have not.

16 Q. Have you talked to him since
17 then about Colonel Hikus' discussions
18 with Mary Woolly?

19 A. Have I talked to him about the
20 discussions with Woolly?

21 Q. Sure.

22 A. No, I have not.

23 Q. Do you know whether Woolly and
24 Campbell get along?

25 A. No, I do not.

1 Q. Do you know why ---?

2 A. I would imagine they do.

3 Q. Why?

4 A. Because they work together.

5 Q. Do you and Hikus get along?

6 A. Yes, we do.

7 Q. Well, have you sat down and
8 taken Mr. Hikus to task for going to
9 Mary Woolly?

10 A. That only happened a couple of
11 days ago, that's the first that I've
12 become aware of it.

13 Q. You haven't had time to sit
14 down with him and discuss it?

15 A. I have not had time to sit
16 down with him and discuss it.

17 Q. Do you plan to sit down with
18 him and discuss it?

19 A. I'm not sure what I'm going to
20 do.

21 Q. Are you going to discipline
22 him for that?

23 A. I'm not sure what I'm going to
24 do in relation to that.

25 Q. Is that not a violation of

1 what you have been concerned about in
2 this case, i.e., a circumvention of
3 the chain of command?

4 A. Yes, it is.

5 Q. So Colonel Hikus circumvented
6 the chain of command by reporting a
7 matter of public concern to Mary
8 Woolly in the Governor's Office; am I
9 correct?

10 A. Before he advised me, yes,
11 sir.

12 Q. Before he advised you, that's
13 correct?

14 A. Yes, sir.

15 Q. Now, what motivated him to do
16 that; do you know?

17 A. I have no idea.

18 Q. Is he a supporter of yours?

19 A. What do you mean a supporter?

20 Q. Sir, I've been around politics
21 a long time and I think you're a
22 professional. Lieutenant colonels
23 are chosen for the Pennsylvania State
24 Police not by you but by the
25 Governor; am I correct?

1 A. They are appointed by the
2 Governor but selected by me.

3 Q. So you selected Hikus?

4 A. It was my recommendation to
5 the Chief of Staff. It was my
6 invitation for Colonel Hikus to
7 become involved in the competition
8 for the job and the interview process
9 for the job.

10 Q. Now, do you have no idea why
11 Colonel Hikus would betray you and go
12 to Mary Woolly in the Governor's
13 Office about such an extremely
14 sensitive matter and not tell you
15 first? Because it is a betrayal; is
16 it not?

17 A. I don't know if it's a
18 betrayal or not. I don't know what
19 was in his mind. I don't know why he
20 would tell someone outside the
21 department before he told me.

22 Q. Do you have a recollection of
23 signing a change order for AR-1 on or
24 about February of 2001?

25 A. No, I do not.

1 Q. Do you know if more than one
2 change order was signed on your
3 behalf?

4 A. The change orders for
5 regulations are signed all the time,
6 so I don't know.

7 Q. So you wouldn't know?

8 A. I don't know.

9 Q. Do you know if there was a
10 Change 68 and a Change 66?

11 A. I don't know.

12 Q. Have you ever had occasion to
13 have the ink smear on one of your
14 signatures on a document that was a
15 year old, if you can recollect?

16 A. No, I cannot recollect one.

17 Q. Can I --- the document that
18 you have there, I don't know how the
19 young lady has that marked. I think
20 it's Number One.

21 A. Exhibit Number One?

22 Q. Yes, sir. Can I ask you some
23 questions about Number One?

24 A. Yes, sir.

25 Q. You don't know anything, I

1 don't assume, about Special Order
2 99-102 dated October 7, 1999?

3 A. I'd have to read it and look
4 at it to tell you.

5 Q. You know you'd probably be
6 talking about hundreds and hundreds
7 and hundreds of those kinds of
8 things. Isn't that ---?

9 A. There's an awful lot of them.

10 Q. Yes. And this one purports to
11 be a subject about a training
12 opportunity; right?

13 A. Exhibit One does, yes, sir.

14 Q. And it purports to be a ---
15 it's routed to the Director of the
16 Bureau of Personnel; right?

17 A. Yes, it is.

18 Q. And it purports to be from,
19 and then there's an initial there,
20 Captain Darrell G. Ober; right?

21 A. No, sir.

22 Q. What is that?

23 A. It is a typewritten name but
24 with no initial.

25 Q. Okay. And underneath that

1 there's a thing that says reference;
2 right?

3 A. Yes, sir.

4 Q. And there's subsection A;
5 right?

6 A. There is a subsection A which
7 is the reference, the special order.

8 Q. To the special order. And the
9 enclosure is a résumé of
10 qualifications; right?

11 A. Yes, sir.

12 Q. And then it says on your
13 document, I request to be considered
14 for the subject training; right?

15 A. Yes, sir.

16 Q. And then it lists the
17 requested information is as follows
18 and it lists some information and it
19 says, enclosure one is a résumé of my
20 qualifications, but there's nothing
21 attached here?

22 A. That is correct.

23 Q. And in the lower left-hand
24 corner of that document, there's
25 nothing there; is there?

1 A. No, sir.

2 Q. Give me just one minute.

3 Colonel, do you know someone named

4 Becky Brown?

5 A. Yes, I do.

6 Q. What's she do?

7 A. She's the administrative

8 officer for the executive offices.

9 Q. Do you think you'd know her

10 writing?

11 A. I have no idea what her

12 writing is.

13 Q. Okay.

14 A. Mr. Bailey, can I

15 ask --- you'd ask if you can ask me

16 about that. Can I ask you to go back

17 to this Exhibit Number Two?

18 Q. Yes. Just a minute. Okay.

19 Go ahead.

20 A. Where it is page, I think your

21 page 7.

22 Q. Okay.

23 A. Under number 2?

24 Q. Yes.

25 A. And the second sentence under

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1 that. The first sentence is, was I a
2 subject of investigation or any of
3 lieutenant colonels.

4 Q. Wait a minute. I'm not with
5 you. Yes.

6 A. And right underneath that it
7 says, if you were I would have been
8 told.

9 Q. Right.

10 A. Sure your name was never
11 mentioned.

12 Q. Yes.

13 A. When you were asking me about
14 that --- I just want to make sure
15 that I have the record clear. When
16 you were asking me about that
17 statement, if you were I would have
18 been told that it's accurate and
19 clear that you understand what I was
20 referring there. This is Rick
21 Mascara, the SAC's response to my
22 question, was I a subject of
23 investigation or of any lieutenants
24 colonels. And he said to me, if you
25 were I, Rick Mascara, would have been

1 time the way that I took it if I
2 understand what we're talking about
3 here, and I had questioned you rather
4 intensely on this area, is that it
5 would have been improper for him to
6 tell you. And your response to
7 me --- see, I don't think it makes
8 any difference what Rick meant by
9 that. Because see, as to Rick, this
10 is hearsay. I was interested in what
11 your response was. And my
12 understanding what your response was
13 --- I had questioned you about
14 whether or not that would have been
15 improper. If Rick meant by that ---
16 if I had heard of that, I would have
17 told you putting loyalty above all
18 things. Remember when I asked you
19 that?

20 A. Yes, I do.

21 Q. Okay. If I remember
22 correctly, you didn't indicate to me
23 that that would have been wrong
24 unless there was this high degree of
25 probable cause that implicated you

1 personally. That's my memory; am I
2 correct?

3 A. Yes. And I just wanted to
4 make sure that you understood that
5 when it said, if you were I would
6 have been told that. That is
7 Mascara's words.

8 Q. Oh, I understand, that's
9 Mascara's words.

10 A. Okay.

11 Q. I wasn't interested in that.
12 I was interested in what you meant by
13 it and I don't think anything's
14 changed. What you meant by that, if
15 I understand it correctly --- you
16 better make sure this is clear now
17 because it's an important point to
18 us. As I understand what you meant
19 about this, it was a case of unless
20 there was this high degree of
21 probable cause about you, in other
22 words, implicating you personally, a
23 well developed --- you know, naming
24 you, that you were a target, you
25 Colonel Evanko you should have been

1 told.

2 A. Or the Commissioner.

3 Q. Or the Commissioner. That you
4 should have been told?

5 A. Yes.

6 Q. And then I questioned you
7 about an ambiguity about a group,
8 that sort of thing. And you told me
9 again unless it's about you, you
10 should have been told?

11 A. Yes.

12 Q. And I questioned you about
13 what if it could've involved you, and
14 you said unless it's this probable
15 cause, which I defined as a legal
16 standard meaning I can bring charges
17 against you, you should've been told.
18 If I remember correctly, sir, you
19 agreed with me. Now if you want to
20 change it you can change it now.

21 A. The only thing I wanted to
22 make sure is that you understood what
23 that ---.

24 Q. I don't think it makes any
25 difference. Mr. Mascara isn't around

1 for some reason. I don't know where
2 he is. Do you know where he is?

3 A. I have no idea.

4 Q. When is the last time you
5 talked to him?

6 A. Probably that day.

7 Q. No, you talked to him the next
8 day; remember?

9 A. The day that ---.

10 Q. Or later that afternoon, you
11 talked to him again.

12 A. May 20th of 1999.

13 Q. Okay. Thanks. I appreciate
14 the clarification. Who is Ron Wilt
15 (phonetic)?

16 A. He is the project manager for
17 the Instant Information Management
18 System.

19 Q. Was Captain Ober working with
20 the IIMS project as late as April
21 6th, 2000?

22 A. I don't think so.

23 Q. How about the end of March
24 2000? Was he still working with them
25 then?

1 A. I don't know.

2 Q. How about February 2000? Was
3 he working with them then?

4 A. I'm not sure.

5 Q. Give me just a second, sir.
6 Have you ever seen this document
7 here?

8 ATTORNEY GUIDO:

9 Can you hand that to
10 the court reporter to mark?

11 COURT REPORTER:

12 Marking it as Exhibit
13 Three.

14 (Deposition Exhibit
15 Three marked
16 for identification.)

17 A. No, I have not.

18 BY ATTORNEY BAILEY:

19 Q. You don't know what that is?

20 A. I know what it is but I have
21 not seen it.

22 Q. Does it say the reason why
23 Ober wasn't given that assignment?

24 A. Your request, part of this
25 reads, your request was not received

1 in the Bureau of Personnel by the
2 October 22nd, 1999 deadline.

3 Q. Any facts known to you that
4 would indicate that that is false on
5 behalf of Mr. Coury?

6 A. No, sir.

7 Q. Or an error?

8 A. No, sir. In fact, it's not
9 even initialed off by Lieutenant
10 Colonel Coury.

11 Q. Who is it initialed off by?

12 A. It appears to be Robert Einsel
13 (phonetic).

14 Q. Who is Mr. Einsel?

15 A. Director of the Bureau of
16 Training and Education.

17 Q. Who does it purport to be
18 from?

19 A. Captain Darrell G. Ober.

20 Q. Who is it to?

21 A. Lieutenant Colonel Thomas
22 Coury.

23 Q. And who's it from in terms of
24 the response? Let me see it for just
25 a second. Did it indicate --- well,

1 wait a minute. I'll give it back to
2 you. Just a second. You're not
3 suggesting it didn't come from
4 Lieutenant Colonel Coury and that Mr.
5 Einsel made this up or something; are
6 you?

7 A. I'm suggesting --- I'm saying
8 that this is signed off on by
9 somebody else other than Colonel
10 Coury. It has his initials, slash,
11 and it appears to be R.E.

12 Q. Well, is it possible that it
13 came from Mr. Coury to him and then
14 he initialed it and gave it to
15 somebody?

16 A. My experience in this is that
17 Major Einsel would have probably have
18 been acting or sitting in for that
19 day and came across his desk as he
20 sat there and signed --- I'm sorry.

21 Q. That's okay. We'll talk to
22 Mr. Coury about it and let him see if
23 he can explain it or talk about it.
24 The point is that you don't know
25 anything about it; right?

1 A. That is correct.

2 Q. What was the --- wasn't it
3 Major Wertz who made a request of you
4 to do the transfer move?

5 A. Pardon me?

6 Q. Was there some kind of
7 relationship here between troopers or
8 officers, do you know, a personal
9 type of thing?

10 A. I'm not sure what you're
11 referring to?

12 Q. Well, involving Transue. Is
13 that a she by the way?

14 A. It is a female, yes.

15 Q. It is a female.

16 A. She is a female.

17 Q. Okay. All right. Now, she,
18 the female ---.

19 A. Captain Transue is a female.

20 Q. Captain Transue is a female.
21 Well, who did you say first told you
22 about Transue, to maybe put Transue
23 out on this RNC thing?

24 A. It would have been Lieutenant
25 Colonel Wescott.

1 Q. Did Major Wertz play any role
2 in any of that?

3 A. I think he requested her
4 assignment or he requested an
5 assignment of an individual to assist
6 him fulltime in the preparation of
7 the RNC.

8 Q. Did Captain Transue have a
9 love partner or a love friend or
10 something that you know of, with
11 anybody?

12 A. Not that I know of. I don't
13 know her that well.

14 Q. I'm not suggesting you do,
15 sir, and I didn't mean to imply that.
16 But do you know of her friendships
17 with anyone?

18 A. No, I do not.

19 Q. And I don't mean that in a
20 negative way. Transue was --- how
21 long before that RCN get together was
22 she transferred?

23 A. One year.

24 Q. Could it have been a year and
25 a half?

1 A. No, I thought it was a year.

2 BRIEF INTERRUPTION

3 BY ATTORNEY BAILEY:

4 Q. Remember Colonel Wescott
5 testifying about being out in San
6 Diego?

7 A. Yes, I do.

8 Q. Did he discuss that with you?

9 A. About going out there? Yes.

10 Q. Yes. Did he discuss anything
11 about the discussions and talks he
12 had out there?

13 A. He would have told me that the
14 highway patrol and the San Diego
15 Police, I believe it was, made a
16 recommendation that you have to have
17 a full team of people working in this
18 fulltime, not just part time, because
19 it's so massive.

20 Q. Who did he talk to? Was it
21 Arizona or Southern California? Was
22 it Wertz that he talked to out there
23 about Ober?

24 A. Pardon me?

25 Q. He talked to Ober about

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1 investigating Ober to somebody out
2 there. Do you remember?

3 A. In San Diego?

4 Q. Yes. Or in Arizona someplace
5 or something?

6 A. I think Colonel Wescott talked
7 about talking to Major Wertz out west
8 somewhere.

9 Q. That's what I remember. I
10 just can't remember the details. Did
11 you ever take Pennsylvania State
12 Police forces down to Gettysburg?

13 A. No, sir.

14 Q. Did you ever ride the
15 battlefield down there with anybody?

16 A. Yes, sir.

17 Q. What was that about? No PSP
18 horses down there?

19 A. I don't think I've ever taken
20 a Pennsylvania State Police horse
21 down there.

22 Q. Okay. Do you remember Colonel
23 Coury, Lieutenant Colonel Coury going
24 to some FBI classes and then hosting
25 an event up at the headquarters or

1 something?

2 A. You'd have to be a little more
3 specific.

4 Q. Purchase of a barbecue machine
5 or a barbecue device or something.
6 Do you know anything about that?

7 A. I know that several years ago
8 one was purchased by the academy for
9 events.

10 Q. Do you know if that was done
11 for Colonel Coury?

12 A. I don't believe so, but I'm
13 not positive.

14 Q. Okay. I think we talked about
15 the swimming events. You don't know
16 about any swimming events out there,
17 or lifeguards. I was wondering about
18 --- I don't remember clearly on this,
19 maybe you can help me. You were
20 present for Mr. Wescott's deposition;
21 right?

22 A. Yes, I was.

23 Q. I thought you testified --- I
24 may be mistaken, and I want your
25 attorney to correct me if they

1 remember. I thought he testified
2 that o one would ever be promoted in
3 order to accommodate that National
4 Governors' Association meeting for
5 that purpose, that no one would ever
6 be promoted for that purpose. Do you
7 have a recollection of him testifying
8 to that?

9 A. No, I don't.

10 Q. All right. Then I withdraw
11 the question, sir. Strike the
12 withdrawal of that question and let
13 me rephrase it. Do you remember if I
14 questioned him about that?

15 A. No, I don't remember if you
16 did or not.

17 Q. You don't remember whether I
18 questioned him about that or whether
19 he responded; right?

20 A. No, sir, I don't.

21 Q. By the way, where does Mr.
22 Young reside?

23 A. In the Philadelphia area.

24 Q. Do you know whether Mr. Wertz
25 and Mr. Transue date at all?

1 A. I do not know.

2 Q. So you don't know whether ---
3 bottom line, you don't know whether
4 Mr. Wertz had any personal interest?
5 And I'm not indicating that it's
6 improper or that we aren't all human.
7 All I'm asking is whether or not you
8 know Mr. Wertz if he had any kind of
9 personal interest in the transfer of
10 Ms. Transue?

11 A. No, I don't. I don't know
12 either of them personally that well.

13 Q. Okay. I'm just asking you if
14 you have any knowledge of that. And
15 another thing that's confused me,
16 Colonel, and maybe you can help me.
17 When we had Mr. Puddleiner (phonetic)
18 in, we were asking him different
19 questions about the NGA. And when I
20 questioned you earlier about it, you
21 indicated that the NGA was actually
22 centered up in State College; right?

23 A. Yes, sir.

24 Q. Why was Ober being sent to
25 Washington to help with the NGA up in

1 State College? I don't mean any ---
2 I've been up to State College
3 recently about an hour and 15 minutes
4 from Harrisburg, roads weren't as
5 good then, I don't think. But you
6 know, still why would he go out to
7 Washington to help with something up
8 in State College?

9 A. That's where the area
10 commander is headquartered and that's
11 where the plans were being made.

12 Q. Well, was there anybody
13 assigned to the NGA from like Altoona
14 or Blairsville or anything?

15 A. I would imagine there were
16 several commanders assigned to that
17 operation because it was so big.

18 Q. But you needed Darrell out in
19 Washington, PA; right? Little
20 Washington as its called.

21 A. To assist Major Zipinka
22 fulltime, yes.

23 Q. Do you know whether Mr.
24 Zipinka had an immediate need for
25 Ober out there? I mean like

1 yesterday?

2 A. I know that Colonel Wescott
3 wanted somebody out there as soon as
4 he could get somebody out there.

5 Q. Wescott ever tell you why?

6 A. Because Seattle had exploded
7 with the World Trade Organization
8 demonstrations. State of emergency
9 declared curfew, National Guard
10 called out and he didn't want to ---
11 make sure that state police reacted
12 the same way as Seattle, wanted to be
13 prepared for it.

14 Q. Okay. Was Mr. Ober at one
15 time, on a book committee, some kind
16 of a book committee?

17 A. Yes, he was.

18 Q. Why did you take him off?

19 A. I think Lieutenant Colonel
20 Coury did that.

21 Q. I may be mistaken, sir, but I
22 think you testified that you did.
23 You're testifying now that he did?

24 A. Yeah, I think he did. I think
25 he's the one that --- I probably made

1 the decision and then he drafted the
2 correspondence or he made the
3 decision and I agreed with it. One
4 of the two, I'm just not sure.

5 Q. Okay. Can you tell us why?

6 A. I don't remember the
7 circumstances. I think as they
8 existed Lieutenant Colonel Hikus was
9 continuing to ask for additional
10 people assigned to the IIMS project,
11 he wanted people assigned full-time.
12 There was a continual request of
13 officers and troopers and employees
14 there and they wanted those people
15 full time. I think that was the
16 reason.

17 Q. So the reason to take him off
18 the book committee was he was too
19 busy?

20 A. I think that's what it was.

21 Q. IIMS was very important and
22 about --- well, naturally you asked
23 Captain Ober about that; right? I
24 mean, the book committee is sort of
25 extracurricular so to speak; isn't

1 it?

2 A. I think it's during work
3 hours.

4 Q. Okay. Of course, you
5 consulted with Captain Ober, you sat
6 him down and talked with him about
7 that; right?

8 A. No, I didn't.

9 Q. Well, when did you take him
10 off the book committee?

11 A. I don't remember.

12 Q. No, not you. If it was you or
13 Mr. Coury together or Mr. Coury and
14 you together or however it went, you
15 don't know when you did that?

16 A. No, I don't.

17 Q. Of course, you're putting Ober
18 back on the book committee; aren't
19 you?

20 A. I don't care if he goes back
21 on the book committee if the head of
22 the book committee wants him back on
23 there.

24 Q. You consulted with the head of
25 the book committee when you took him

1 off; didn't you Colonel?

2 A. I don't believe that I did.
3 Maybe Colonel Coury did.

4 Q. Well, Colonel, why don't you
5 tell us when the book's going to e
6 done, when it's going to be printed
7 or when that project finishes up?

8 A. 2005.

9 Q. To coincide with the 100-year
10 history in one of the finest state
11 police organizations in the entire
12 nation that prides itself on
13 integrity and openness; right, sir?

14 A. For the 100th anniversary of
15 the state police.

16 Q. 2005; right, Colonel Evanko?

17 A. That is correct.

18 Q. Sir, what I would like to do
19 is ask your erstwhile legal eagles if
20 we can take a 10-minute break. I
21 think I might be able to shorten up
22 what I have to do if I have a chance
23 to reorganize some of this material.
24 Because Syndi wants us out of
25 here --- we all want to be out of

1 here by five o'clock at the latest.
2 I know the stenographer does. So
3 could we take ten? And would you
4 mind giving me --- shutting off the
5 microphones and giving me this room a
6 little bit or a room to work in with
7 my client? I can go somewhere else.
8 Is it easier for me to go somewhere
9 else, or you can just shut this stuff
10 off? You know what, I don't want to
11 be in here with the stuff. Can you
12 give me a little room here somewhere,
13 Colonel, I can sit in?

14 A. There are two rooms available
15 right here.

16 Q. Okay.

17 VIDEOGRAPHER:

18 It is 3:18 p.m. and
19 we're suspending.

20 SHORT BREAK TAKEN

21 VIDEOGRAPHER:

22 It is 3:33 p.m.,
23 3-27-02, and we're continuing
24 with the deposition of Colonel
25 Evanko.

1 BY ATTORNEY BAILEY:

2 Q. Colonel, let me ask about
3 here, find the amended complaint. I
4 just want to go through here by
5 paragraph and read some allegations
6 and give you the opportunity to
7 expound on the reasons why you feel
8 that they're not correct.

9 In paragraph 20 --- and bear
10 in mind that this complaint's
11 composed by myself, Mr. Ober's
12 attorney, and that pleading rules
13 under Federal Rules under Civil
14 Procedure 8 is as to notice pleading
15 requirements, which is just called
16 conclusary pleading. But there are a
17 lot of inter-related fact allegations
18 here and I want to run them by you.
19 It says on or about September 1998
20 that Darrell Ober was one of the
21 brightest and best, a rising star in
22 the Pennsylvania State Police. Do
23 you dispute that or that he had a
24 very good-looking career there and
25 was moving along quite well? Could

1 you say that, or was he a
2 subperformer?

3 A. I think he was comparable to
4 the other captains that we have on
5 the state police.

6 Q. Okay. It says in here on May
7 2nd, 1998, Captain Ober was named as
8 Director of Internal Affairs Division
9 and later in early September he was
10 named as acting Bureau Director of
11 the Pennsylvania State Police of
12 Bureau of Professional
13 Responsibility. Does that square
14 with your recollection? I'm sorry.

15 ATTORNEY GUIDO:

16 Could you just give us
17 some paragraph reference?

18 ATTORNEY BAILEY:

19 Sure. Paragraph 21.

20 I'm sorry.

21 ATTORNEY GUIDO:

22 Thank you.

23 BY ATTORNEY BAILEY:

24 Q. Does that square with your
25 recollection, sir?

1 A. There was a period of 12
2 working days that Captain Ober was
3 the Director of Bureau of
4 Professional Responsibility, but I
5 don't know the dates.

6 Q. Okay. Now, it says this
7 career path is customarily associated
8 in the state police with advancement
9 for the various highest ranks in the
10 organization including commissioner.
11 And I've looked at your own career
12 and researched on this case, it seems
13 to be more or less consistent the
14 same way. Is that a good career
15 path, at least, the kind of
16 experience up until October of 1998
17 that Captain Ober had for advancement
18 or movement?

19 A. I would not characterize
20 assignment to BPR in that way.

21 Q. Okay.

22 A. I would look at assignments to
23 LCE, for example, Colonel Walp was in
24 LCE, Lieutenant Colonel Hikus was in
25 LCE.

1 Q. And you'd look at LCE as a
2 place where a captain filling a
3 lieutenant's position would be an
4 indication of skill and ability?

5 A. For the three months that he
6 was there until a captain's vacancy
7 opened up in LCE.

8 Q. Now, in paragraph 31 an
9 allegation is made that I think you
10 responded to at least part of this.
11 On being told that the investigation
12 by Plaintiff and Lieutenant Colonel
13 Hikus, Defendant Evanko exploded in a
14 fit of rage. Exploded in a fit of
15 rage, is that a description of what
16 you did?

17 A. No, it is not. The captain
18 has used at various times, irate,
19 upset, angry and this verbiage here
20 and that is not accurate.

21 Q. He told Hikus and the
22 Plaintiff, Darrell Ober, that quote I
23 will have Louie Freeh, Director of
24 the FBI on the phone tonight and have
25 the agents involved transferred by

1 tomorrow. Now, that's Captain Ober's
2 allegation. You heard the testimony
3 of Lieutenant Colonel Hikus. If I
4 understand your testimony, you didn't
5 say anything like that.

6 A. That is not true.

7 Q. So these two Pennsylvania
8 State Police officers, a lieutenant
9 colonel and a captain, have agreed
10 upon a lie and that lie is reflected
11 in this complaint?

12 A. I'm saying that I never said
13 that and I didn't hear Lieutenant
14 Colonel Hikus say that either. And I
15 didn't say it.

16 Q. All right. What do you
17 remember Lieutenant Colonel Hikus
18 saying then?

19 A. I'm not sure what it was but
20 it wasn't that.

21 Q. Paragraph 33 says, subsequent
22 to learning about the FBI
23 investigation, Colonel Evanko sought
24 the personal and official approval of
25 the Defendant Mark Campbell, to begin

1 an investigation into Captain Ober.
2 Your testimony is that that is simply
3 not accurate or correct; is that fair
4 to say?

5 A. That is not true.

6 Q. Okay. You don't deny that
7 Campbell was an assistant to the
8 Pennsylvania --- was an assistant or
9 some sort of high staff position on
10 the Pennsylvania Governor Chief of
11 Staff though, that was true?

12 A. He was a Deputy Chief of
13 Staff.

14 Q. Deputy Chief of Staff. Okay.
15 Paragraph 34 says that the time that
16 Campbell and Evanko conferred on
17 investigating Ober you've already
18 indicated that --- well, did you and
19 Campbell talk about investigating
20 Ober, number one, or number two, the
21 circumstances surrounding the FBI
22 problem?

23 A. I would have told Mr. Campbell
24 that I was going to do an
25 administrative inquiry or inquiry

1 into the facts of this. That would
2 have been the extent of it.

3 Q. So you wouldn't have said I
4 was going to investigate Hikus or
5 Ober or those fellows or anything
6 like that, you would have told him
7 --- there is a difference between
8 would have and what you remember, but
9 your testimony here today is that you
10 would have told him that you were
11 going to look into the circumstances?

12 A. That's what I recall talking
13 to him about.

14 Q. That's different. Okay. You
15 do recall talking to him about that
16 and saying that you're going to look
17 into the circumstances?

18 A. Yes, I do.

19 Q. Now, at that time did you
20 suspect Ober of having committed a
21 wrong at the time you talked to Mark
22 Campbell?

23 A. Other than going past his
24 major and BPR, I didn't know what to
25 think.

1 Q. So the allegation here is that
2 you and Campbell, we're really
3 talking about you now or asking about
4 you now, knew that Ober committed no
5 wrong, had broken no law and had
6 violated no regulation practice or
7 custom in the Pennsylvania State
8 Police. That allegation here is
9 inaccurate because you didn't know
10 what had happened and although it may
11 not have been a violation of
12 regulation you felt that Ober had
13 committed a wrong by circumventing
14 Mr. Conley and going to Hikus?

15 A. Yes, I did.

16 Q. Okay. Do you want to read
17 paragraph 35? It is not intended to
18 inflame or upset you, please. It's
19 not meant to be argumentative. I'm
20 going to read it and I want you to
21 tell me if it's accurate. Paragraph
22 35, nonetheless, in order to punish
23 Ober because he had followed proper
24 PSP procedure, obeyed the law and
25 conducted himself in a spirit,

1 supportive of proper law enforcement
2 duties and practices consistent with
3 his oath as opposed to demonstrating
4 blind devotion, obedience and
5 subservience to the personal and
6 political interest and concerns of
7 the Defendants, both Evanko and
8 Campbell, eliminating Campbell from
9 this now by virtue of assuming the
10 information you've given us is
11 accurate. So it would read, Evanko
12 decided to use Ober as an example to
13 PSP Officers and members to show that
14 obedience to the political
15 sensitivity of the Pennsylvania State
16 Police leader and his political
17 mentors is a necessity regardless of
18 what the law may require even if that
19 leader himself is a target or
20 potential target of an official law
21 enforcement agency investigation
22 himself. That is simply untrue?

23 A. Yes, it is untrue.

24 Q. Okay. Now, under the heading
25 investigation on page 10 of the

1 complaint, paragraph 37 reads,
2 investigations such as those done on
3 Captain Ober had the effect of
4 destroying an officer's standing and
5 reputation among his colleagues. Do
6 you believe that to be true?

7 A. No, I don't.

8 Q. Hey becomes shunned and is
9 subjected to insults and is
10 ostracized. Do you believe that can
11 happen, or have you ever known it to
12 happen?

13 A. No, I do not know it to have
14 happened. And I don't believe it
15 happened here.

16 Q. Okay. Why don't you believe
17 it happened here?

18 A. Because I haven't seen it.

19 Q. So you don't know whether it's
20 happened here. You just haven't seen
21 it?

22 A. I haven't seen it, and I don't
23 believe it to have happened.

24 Q. All right. Plaintiff was
25 subjected to an unlawful and improper

300

1 investigation. It's fair to say you
2 do not agree with that?

3 A. That is fair.

4 Q. At the direction of Evanko and
5 Campbell --- Campbell, according to
6 you, didn't order any investigation
7 or approve one but you at least did
8 order an investigation.

9 A. I ordered an administrative
10 inquiry.

11 Q. An administrative inquiry.
12 These investigations were conducted
13 for two unlawful reasons. We know
14 you do not agree with that. You
15 don't have to respond, of course.
16 You've already denied that. The
17 first was to learn the breadth and
18 depth of Ober's knowledge about the
19 FBI investigation. Now, was there
20 any purpose in ascertaining Ober's
21 knowledge about the FBI
22 investigation?

23 A. I wanted to know all of the
24 circumstances from all of the
25 involved parties in this incident.

1 A. I don't know.

2 Q. How about February 2000? Was
3 he working with them then?

4 A. I'm not sure.

5 Q. Give me just a second, sir.
6 Have you ever seen this document
7 here?

8 ATTORNEY GUIDO:

9 Can you hand that to
10 the court reporter to mark?

11 COURT REPORTER:

12 Marking it as Exhibit
13 Three.

14 (Deposition Exhibit
15 Three marked
16 for identification.)

17 A. No, I have not.

18 BY ATTORNEY BAILEY:

19 Q. You don't know what that is?

20 A. I know what it is but I have
21 not seen it.

22 Q. Does it say the reason why
23 Ober wasn't given that assignment?

24 A. Your request, part of this
25 reads, your request was not received

1 in the Bureau of Personnel by the
2 October 22nd, 1999 deadline.

3 Q. Any facts known to you that
4 would indicate that that is false on
5 behalf of Mr. Coury?

6 A. No, sir.

7 Q. Or an error?

8 A. No, sir. In fact, it's not
9 even initialed off by Lieutenant
10 Colonel Coury.

11 Q. Who is it initialed off by?

12 A. It appears to be Robert Einsel
13 (phonetic).

14 Q. Who is Mr. Einsel?

15 A. Director of the Bureau of
16 Training and Education.

17 Q. Who does it purport to be
18 from?

19 A. Captain Darrell G. Ober.

20 Q. Who is it to?

21 A. Lieutenant Colonel Thomas
22 Coury.

23 Q. And who's it from in terms of
24 the response? Let me see it for just
25 a second. Did it indicate --- well,

1 wait a minute. I'll give it back to
2 you. Just a second. You're not
3 suggesting it didn't come from
4 Lieutenant Colonel Coury and that Mr.
5 Einsel made this up or something; are
6 you?

7 A. I'm suggesting --- I'm saying
8 that this is signed off on by
9 somebody else other than Colonel
10 Coury. It has his initials, slash,
11 and it appears to be R.E.

12 Q. Well, is it possible that it
13 came from Mr. Coury to him and then
14 he initialed it and gave it to
15 somebody?

16 A. My experience in this is that
17 Major Einsel would have probably have
18 been acting or sitting in for that
19 day and came across his desk as he
20 sat there and signed --- I'm sorry.

21 Q. That's okay. We'll talk to
22 Mr. Coury about it and let him see if
23 he can explain it or talk about it.
24 The point is that you don't know
25 anything about it; right?

1 A. That is correct.

2 Q. What was the --- wasn't it
3 Major Wertz who made a request of you
4 to do the transfer move?

5 A. Pardon me?

6 Q. Was there some kind of
7 relationship here between troopers or
8 officers, do you know, a personal
9 type of thing?

10 A. I'm not sure what you're
11 referring to?

12 Q. Well, involving Transue. Is
13 that a she by the way?

14 A. It is a female, yes.

15 Q. It is a female.

16 A. She is a female.

17 Q. Okay. All right. Now, she,
18 the female ---.

19 A. Captain Transue is a female.

20 Q. Captain Transue is a female.
21 Well, who did you say first told you
22 about Transue, to maybe put Transue
23 out on this RNC thing?

24 A. It would have been Lieutenant
25 Colonel Wescott.

1 Q. Did Major Wertz play any role
2 in any of that?

3 A. I think he requested her
4 assignment or he requested an
5 assignment of an individual to assist
6 him fulltime in the preparation of
7 the RNC.

8 Q. Did Captain Transue have a
9 love partner or a love friend or
10 something that you know of, with
11 anybody?

12 A. Not that I know of. I don't
13 know her that well.

14 Q. I'm not suggesting you do,
15 sir, and I didn't mean to imply that.
16 But do you know of her friendships
17 with anyone?

18 A. No, I do not.

19 Q. And I don't mean that in a
20 negative way. Transue was --- how
21 long before that RCN get together was
22 she transferred?

23 A. One year.

24 Q. Could it have been a year and
25 a half?

1 A. No, I thought it was a year.

2 BRIEF INTERRUPTION

3 BY ATTORNEY BAILEY:

4 Q. Remember Colonel Wescott
5 testifying about being out in San
6 Diego?

7 A. Yes, I do.

8 Q. Did he discuss that with you?

9 A. About going out there? Yes.

10 Q. Yes. Did he discuss anything
11 about the discussions and talks he
12 had out there?

13 A. He would have told me that the
14 highway patrol and the San Diego
15 Police, I believe it was, made a
16 recommendation that you have to have
17 a full team of people working in this
18 fulltime, not just part time, because
19 it's so massive.

20 Q. Who did he talk to? Was it
21 Arizona or Southern California? Was
22 it Wertz that he talked to out there
23 about Ober?

24 A. Pardon me?

25 Q. He talked to Ober about

1 investigating Ober to somebody out
2 there. Do you remember?

3 A. In San Diego?

4 Q. Yes. Or in Arizona someplace
5 or something?

6 A. I think Colonel Wescott talked
7 about talking to Major Wertz out west
8 somewhere.

9 Q. That's what I remember. I
10 just can't remember the details. Did
11 you ever take Pennsylvania State
12 Police forces down to Gettysburg?

13 A. No, sir.

14 Q. Did you ever ride the
15 battlefield down there with anybody?

16 A. Yes, sir.

17 Q. What was that about? No PSP
18 horses down there?

19 A. I don't think I've ever taken
20 a Pennsylvania State Police horse
21 down there.

22 Q. Okay. Do you remember Colonel
23 Coury, Lieutenant Colonel Coury going
24 to some FBI classes and then hosting
25 an event up at the headquarters or

1 something?

2 A. You'd have to be a little more
3 specific.

4 Q. Purchase of a barbecue machine
5 or a barbecue device or something.
6 Do you know anything about that?

7 A. I know that several years ago
8 one was purchased by the academy for
9 events.

10 Q. Do you know if that was done
11 for Colonel Coury?

12 A. I don't believe so, but I'm
13 not positive.

14 Q. Okay. I think we talked about
15 the swimming events. You don't know
16 about any swimming events out there,
17 or lifeguards. I was wondering about
18 --- I don't remember clearly on this,
19 maybe you can help me. You were
20 present for Mr. Wescott's deposition;
21 right?

22 A. Yes, I was.

23 Q. I thought you testified --- I
24 may be mistaken, and I want your
25 attorney to correct me if they

1 remember. I thought he testified
2 that o one would ever be promoted in
3 order to accommodate that National
4 Governors' Association meeting for
5 that purpose, that no one would ever
6 be promoted for that purpose. Do you
7 have a recollection of him testifying
8 to that?

9 A. No, I don't.

10 Q. All right. Then I withdraw
11 the question, sir. Strike the
12 withdrawal of that question and let
13 me rephrase it. Do you remember if I
14 questioned him about that?

15 A. No, I don't remember if you
16 did or not.

17 Q. You don't remember whether I
18 questioned him about that or whether
19 he responded; right?

20 A. No, sir, I don't.

21 Q. By the way, where does Mr.
22 Young reside?

23 A. In the Philadelphia area.

24 Q. Do you know whether Mr. Wertz
25 and Mr. Transue date at all?

1 A. I do not know.

2 Q. So you don't know whether ---
3 bottom line, you don't know whether
4 Mr. Wertz had any personal interest?
5 And I'm not indicating that it's
6 improper or that we aren't all human.
7 All I'm asking is whether or not you
8 know Mr. Wertz if he had any kind of
9 personal interest in the transfer of
10 Ms. Transue?

11 A. No, I don't. I don't know
12 either of them personally that well.

13 Q. Okay. I'm just asking you if
14 you have any knowledge of that. And
15 another thing that's confused me,
16 Colonel, and maybe you can help me.
17 When we had Mr. Puddleiner (phonetic)
18 in, we were asking him different
19 questions about the NGA. And when I
20 questioned you earlier about it, you
21 indicated that the NGA was actually
22 centered up in State College; right?

23 A. Yes, sir.

24 Q. Why was Ober being sent to
25 Washington to help with the NGA up in

1 State College? I don't mean any ---
2 I've been up to State College
3 recently about an hour and 15 minutes
4 from Harrisburg, roads weren't as
5 good then, I don't think. But you
6 know, still why would he go out to
7 Washington to help with something up
8 in State College?

9 A. That's where the area
10 commander is headquartered and that's
11 where the plans were being made.

12 Q. Well, was there anybody
13 assigned to the NGA from like Altoona
14 or Blairsville or anything?

15 A. I would imagine there were
16 several commanders assigned to that
17 operation because it was so big.

18 Q. But you needed Darrell out in
19 Washington, PA; right? Little
20 Washington as its called.

21 A. To assist Major Zipinka
22 fulltime, yes.

23 Q. Do you know whether Mr.
24 Zipinka had an immediate need for
25 Ober out there? I mean like

1 yesterday?

2 A. I know that Colonel Wescott
3 wanted somebody out there as soon as
4 he could get somebody out there.

5 Q. Wescott ever tell you why?

6 A. Because Seattle had exploded
7 with the World Trade Organization
8 demonstrations. State of emergency
9 declared curfew, National Guard
10 called out and he didn't want to ---
11 make sure that state police reacted
12 the same way as Seattle, wanted to be
13 prepared for it.

14 Q. Okay. Was Mr. Ober at one
15 time, on a book committee, some kind
16 of a book committee?

17 A. Yes, he was.

18 Q. Why did you take him off?

19 A. I think Lieutenant Colonel
20 Coury did that.

21 Q. I may be mistaken, sir, but I
22 think you testified that you did.
23 You're testifying now that he did?

24 A. Yeah, I think he did. I think
25 he's the one that --- I probably made

1 the decision and then he drafted the
2 correspondence or he made the
3 decision and I agreed with it. One
4 of the two, I'm just not sure.

5 Q. Okay. Can you tell us why?

6 A. I don't remember the
7 circumstances. I think as they
8 existed Lieutenant Colonel Hikus was
9 continuing to ask for additional
10 people assigned to the IIMS project,
11 he wanted people assigned full-time.
12 There was a continual request of
13 officers and troopers and employees
14 there and they wanted those people
15 full time. I think that was the
16 reason.

17 Q. So the reason to take him off
18 the book committee was he was too
19 busy?

20 A. I think that's what it was.

21 Q. IIMS was very important and
22 about --- well, naturally you asked
23 Captain Ober about that; right? I
24 mean, the book committee is sort of
25 extracurricular so to speak; isn't

1 it?

2 A. I think it's during work
3 hours.

4 Q. Okay. Of course, you
5 consulted with Captain Ober, you sat
6 him down and talked with him about
7 that; right?

8 A. No, I didn't.

9 Q. Well, when did you take him
10 off the book committee?

11 A. I don't remember.

12 Q. No, not you. If it was you or
13 Mr. Coury together or Mr. Coury and
14 you together or however it went, you
15 don't know when you did that?

16 A. No, I don't.

17 Q. Of course, you're putting Ober
18 back on the book committee; aren't
19 you?

20 A. I don't care if he goes back
21 on the book committee if the head of
22 the book committee wants him back on
23 there.

24 Q. You consulted with the head of
25 the book committee when you took him

1 off; didn't you Colonel?

2 A. I don't believe that I did.
3 Maybe Colonel Coury did.

4 Q. Well, Colonel, why don't you
5 tell us when the book's going to e
6 done, when it's going to be printed
7 or when that project finishes up?

8 A. 2005.

9 Q. To coincide with the 100-year
10 history in one of the finest state
11 police organizations in the entire
12 nation that prides itself on
13 integrity and openness; right, sir?

14 A. For the 100th anniversary of
15 the state police.

16 Q. 2005; right, Colonel Evanko?

17 A. That is correct.

18 Q. Sir, what I would like to do
19 is ask your erstwhile legal eagles if
20 we can take a 10-minute break. I
21 think I might be able to shorten up
22 what I have to do if I have a chance
23 to reorganize some of this material.
24 Because Syndi wants us out of
25 here --- we all want to be out of

1 here by five o'clock at the latest.
2 I know the stenographer does. So
3 could we take ten? And would you
4 mind giving me --- shutting off the
5 microphones and giving me this room a
6 little bit or a room to work in with
7 my client? I can go somewhere else.
8 Is it easier for me to go somewhere
9 else, or you can just shut this stuff
10 off? You know what, I don't want to
11 be in here with the stuff. Can you
12 give me a little room here somewhere,
13 Colonel, I can sit in?

14 A. There are two rooms available
15 right here.

16 Q. Okay.

17 VIDEOGRAPHER:

18 It is 3:18 p.m. and
19 we're suspending.

20 SHORT BREAK TAKEN

21 VIDEOGRAPHER:

22 It is 3:33 p.m.,
23 3-27-02, and we're continuing
24 with the deposition of Colonel
25 Evanko.

1 BY ATTORNEY BAILEY:

2 Q. Colonel, let me ask about
3 here, find the amended complaint. I
4 just want to go through here by
5 paragraph and read some allegations
6 and give you the opportunity to
7 expound on the reasons why you feel
8 that they're not correct.

9 In paragraph 20 --- and bear
10 in mind that this complaint's
11 composed by myself, Mr. Ober's
12 attorney, and that pleading rules
13 under Federal Rules under Civil
14 Procedure 8 is as to notice pleading
15 requirements, which is just called
16 conclusary pleading. But there are a
17 lot of inter-related fact allegations
18 here and I want to run them by you.
19 It says on or about September 1998
20 that Darrell Ober was one of the
21 brightest and best, a rising star in
22 the Pennsylvania State Police. Do
23 you dispute that or that he had a
24 very good-looking career there and
25 was moving along quite well? Could

1 you say that, or was he a
2 subperformer?

3 A. I think he was comparable to
4 the other captains that we have on
5 the state police.

6 Q. Okay. It says in here on May
7 2nd, 1998, Captain Ober was named as
8 Director of Internal Affairs Division
9 and later in early September he was
10 named as acting Bureau Director of
11 the Pennsylvania State Police of
12 Bureau of Professional
13 Responsibility. Does that square
14 with your recollection? I'm sorry.

15 ATTORNEY GUIDO:

16 Could you just give us
17 some paragraph reference?

18 ATTORNEY BAILEY:

19 Sure. Paragraph 21.

20 I'm sorry.

21 ATTORNEY GUIDO:

22 Thank you.

23 BY ATTORNEY BAILEY:

24 Q. Does that square with your
25 recollection, sir?

1 A. There was a period of 12
2 working days that Captain Ober was
3 the Director of Bureau of
4 Professional Responsibility, but I
5 don't know the dates.

6 Q. Okay. Now, it says this
7 career path is customarily associated
8 in the state police with advancement
9 for the various highest ranks in the
10 organization including commissioner.
11 And I've looked at your own career
12 and researched on this case, it seems
13 to be more or less consistent the
14 same way. Is that a good career
15 path, at least, the kind of
16 experience up until October of 1998
17 that Captain Ober had for advancement
18 or movement?

19 A. I would not characterize
20 assignment to BPR in that way.

21 Q. Okay.

22 A. I would look at assignments to
23 LCE, for example, Colonel Walp was in
24 LCE, Lieutenant Colonel Hikus was in
25 LCE.

1 Q. And you'd look at LCE as a
2 place where a captain filling a
3 lieutenant's position would be an
4 indication of skill and ability?

5 A. For the three months that he
6 was there until a captain's vacancy
7 opened up in LCE.

8 Q. Now, in paragraph 31 an
9 allegation is made that I think you
10 responded to at least part of this.
11 On being told that the investigation
12 by Plaintiff and Lieutenant Colonel
13 Hikus, Defendant Evanko exploded in a
14 fit of rage. Exploded in a fit of
15 rage, is that a description of what
16 you did?

17 A. No, it is not. The captain
18 has used at various times, irate,
19 upset, angry and this verbiage here
20 and that is not accurate.

21 Q. He told Hikus and the
22 Plaintiff, Darrell Ober, that quote I
23 will have Louie Freeh, Director of
24 the FBI on the phone tonight and have
25 the agents involved transferred by

1 tomorrow. Now, that's Captain Ober's
2 allegation. You heard the testimony
3 of Lieutenant Colonel Hikus. If I
4 understand your testimony, you didn't
5 say anything like that.

6 A. That is not true.

7 Q. So these two Pennsylvania
8 State Police officers, a lieutenant
9 colonel and a captain, have agreed
10 upon a lie and that lie is reflected
11 in this complaint?

12 A. I'm saying that I never said
13 that and I didn't hear Lieutenant
14 Colonel Hikus say that either. And I
15 didn't say it.

16 Q. All right. What do you
17 remember Lieutenant Colonel Hikus
18 saying then?

19 A. I'm not sure what it was but
20 it wasn't that.

21 Q. Paragraph 33 says, subsequent
22 to learning about the FBI
23 investigation, Colonel Evanko sought
24 the personal and official approval of
25 the Defendant Mark Campbell, to begin

1 an investigation into Captain Ober.
2 Your testimony is that that is simply
3 not accurate or correct; is that fair
4 to say?

5 A. That is not true.

6 Q. Okay. You don't deny that
7 Campbell was an assistant to the
8 Pennsylvania --- was an assistant or
9 some sort of high staff position on
10 the Pennsylvania Governor Chief of
11 Staff though, that was true?

12 A. He was a Deputy Chief of
13 Staff.

14 Q. Deputy Chief of Staff. Okay.
15 Paragraph 34 says that the time that
16 Campbell and Evanko conferred on
17 investigating Ober you've already
18 indicated that --- well, did you and
19 Campbell talk about investigating
20 Ober, number one, or number two, the
21 circumstances surrounding the FBI
22 problem?

23 A. I would have told Mr. Campbell
24 that I was going to do an
25 administrative inquiry or inquiry

1 into the facts of this. That would
2 have been the extent of it.

3 Q. So you wouldn't have said I
4 was going to investigate Hikus or
5 Ober or those fellows or anything
6 like that, you would have told him
7 --- there is a difference between
8 would have and what you remember, but
9 your testimony here today is that you
10 would have told him that you were
11 going to look into the circumstances?

12 A. That's what I recall talking
13 to him about.

14 Q. That's different. Okay. You
15 do recall talking to him about that
16 and saying that you're going to look
17 into the circumstances?

18 A. Yes, I do.

19 Q. Now, at that time did you
20 suspect Ober of having committed a
21 wrong at the time you talked to Mark
22 Campbell?

23 A. Other than going past his
24 major and BPR, I didn't know what to
25 think.

1 Q. So the allegation here is that
2 you and Campbell, we're really
3 talking about you now or asking about
4 you now, knew that Ober committed no
5 wrong, had broken no law and had
6 violated no regulation practice or
7 custom in the Pennsylvania State
8 Police. That allegation here is
9 inaccurate because you didn't know
10 what had happened and although it may
11 not have been a violation of
12 regulation you felt that Ober had
13 committed a wrong by circumventing
14 Mr. Conley and going to Hikus?

15 A. Yes, I did.

16 Q. Okay. Do you want to read
17 paragraph 35? It is not intended to
18 inflame or upset you, please. It's
19 not meant to be argumentative. I'm
20 going to read it and I want you to
21 tell me if it's accurate. Paragraph
22 35, nonetheless, in order to punish
23 Ober because he had followed proper
24 PSP procedure, obeyed the law and
25 conducted himself in a spirit,

1 supportive of proper law enforcement
2 duties and practices consistent with
3 his oath as opposed to demonstrating
4 blind devotion, obedience and
5 subservience to the personal and
6 political interest and concerns of
7 the Defendants, both Evanko and
8 Campbell, eliminating Campbell from
9 this now by virtue of assuming the
10 information you've given us is
11 accurate. So it would read, Evanko
12 decided to use Ober as an example to
13 PSP Officers and members to show that
14 obedience to the political
15 sensitivity of the Pennsylvania State
16 Police leader and his political
17 mentors is a necessity regardless of
18 what the law may require even if that
19 leader himself is a target or
20 potential target of an official law
21 enforcement agency investigation
22 himself. That is simply untrue?

23 A. Yes, it is untrue.

24 Q. Okay. Now, under the heading
25 investigation on page 10 of the

1 complaint, paragraph 37 reads,
2 investigations such as those done on
3 Captain Ober had the effect of
4 destroying an officer's standing and
5 reputation among his colleagues. Do
6 you believe that to be true?

7 A. No, I don't.

8 Q. Hey becomes shunned and is
9 subjected to insults and is
10 ostracized. Do you believe that can
11 happen, or have you ever known it to
12 happen?

13 A. No, I do not know it to have
14 happened. And I don't believe it
15 happened here.

16 Q. Okay. Why don't you believe
17 it happened here?

18 A. Because I haven't seen it.

19 Q. So you don't know whether it's
20 happened here. You just haven't seen
21 it?

22 A. I haven't seen it, and I don't
23 believe it to have happened.

24 Q. All right. Plaintiff was
25 subjected to an unlawful and improper

1 Q. And whether Evanko and someone
2 in the Governor's Office was a target
3 or actually under suspicion. Well,
4 you were concerned about that? The
5 record's replete with numerous
6 references ---.

7 A. That I was what?

8 Q. Well, here's the allegations.
9 The first was to learn the breadth
10 and depth of Ober's knowledge about
11 the FBI investigation, you've already
12 responded to that. And whether
13 Evanko and someone in the Governor's
14 Office was a target or actually under
15 suspicion, that was not a purpose?

16 A. My concern would have been to
17 try to determine why the FBI or
18 Lieutenant Colonel Hikus didn't tell
19 me. So I guess in a way that would
20 be accurate.

21 Q. Thank you. And the second was
22 to harass and injure Ober as a way to
23 send a signal to others that the
24 Defendants as a leadership cadre
25 require the obedience even the

1 unlawful obedience of PSP members,
2 above all other considerations as an
3 unwritten term and condition of
4 employment. Now, clearly you would
5 not agree with that?

6 A. I would not agree with that
7 and I will go back to the last
8 question. I would agree to that as
9 far as I am concerned but not the
10 Governor's Office.

11 Q. And the last sentence --- I
12 guess that's not real helpful here.
13 Okay. Now, paragraph 39 reads,
14 towards the end after the meeting
15 that you had in your office, the
16 following. That the meeting in your
17 office in which --- well, let's clear
18 that up first. Paragraph 39 says
19 that there was a meeting following
20 Colonel Evanko's meeting with Mark
21 Campbell. We've already indicated it
22 was a phone call and not a meeting;
23 right?

24 A. That's correct.

25 Q. Where Evanko secured

1 permission to investigate the
2 Plaintiff. You already said that did
3 not occur?

4 A. That did not occur.

5 Q. Because Evanko proceed to
6 harass Plaintiff have others such as
7 the Defendants Conley, Coury, and
8 Wescott harass him. Now, clearly you
9 don't agree with that? That is not
10 correct?

11 A. That is not correct.

12 Q. And have him, meaning Ober,
13 officially investigated despite the
14 fact that Evanko was told he should
15 not conduct an investigation. Now,
16 your investigation into Ober ---
17 strike that.

18 Your investigation into the
19 facts and circumstances as you put
20 it, we feel it was into Darrell Ober
21 and respectfully disagree with you on
22 that. But we understand your
23 position and assuming your
24 definition, the investigation into
25 the facts and circumstance of the FBI

1 probe, the allegation here is that
2 you were told that it was not proper,
3 that investigation. There being no
4 cause for such an inquiry as required
5 by PSP policies and rules and by both
6 the Pennsylvania and the United
7 States Constitution. Mr. Coury
8 didn't tell you that?

9 Q. The only thing Colonel Coury
10 told me was that this is not a ---
11 when I said about assigning BPR
12 investigators? This is not a BPR
13 issue, it should be an administrative
14 inquiry.

15 Q. So he was behind the
16 investigation but he said it should
17 be an administrative inquiry?

18 A. It's not a BPR issue and don't
19 assign BPR investigators to it.

20 Q. Why did Captain Brown, in July
21 20th, 1999, put a BPR number on it?
22 Why did he do that? Did you tell him
23 to do that?

24 A. No, I did not tell him.

25 Q. Then why did he do it? Do you

1 know why he did it? Did you ever ask
2 him?

3 A. No, I never asked him and I
4 don't know why he put a number on it.

5 Q. Sir, when Mr. Williams talked
6 to Mr. Brown, we've got testimony on
7 this, they talked about this issue,
8 the nature of this inquiry. We have
9 a deposition from Mr. Brown. You're
10 welcome to read it. I assume you
11 have, I don't know.

12 A. No, I have not.

13 Q. All right, sir. Was the thing
14 ever a BPR investigation, Colonel?

15 A. No, it was not.

16 Q. It was not?

17 A. It was not.

18 Q. It was not, but Captain Brown
19 gave it a BPR number. Who --- why
20 did he do that? Who authorized him
21 to do that? What was the reason for
22 that; do you know?

23 A. I can speculate as to what it
24 is.

25 Q. Then tell me.

1 A. As a tracking number.

2 Q. As a tracking number.

3 A. That's the only reason I could
4 possibly think of.

5 Q. It wasn't to cover; was it?

6 A. Pardon me?

7 Q. It was to provide cover; was
8 it?

9 A. I don't know what you mean.

10 Q. Colonel Conley ever talk to
11 you about this thing as a BPR with a
12 BPR number?

13 A. No, sir.

14 Q. Did you ever discuss Captain
15 Ober with Colonel Conley that you can
16 remember?

17 A. I think anything that I
18 discussed about Captain Ober was with
19 Lieutenant Colonel Coury? Although
20 Captain Conley has an STD directed to
21 me that he says he talked to me, but
22 I don't recall any direct
23 conversations.

24 Q. Sir, I'm sorry, what was that
25 again?

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1 A. What's the question again?

2 ATTORNEY CHRISTIE:

3 It can be read back if
4 you want the court reporter
5 --- the answer's on the
6 record.

7 ATTORNEY BAILEY:

8 No, no, let me go on to
9 another question. I'm sorry
10 ma'am. I'm sorry, I
11 interrupted you.

12 ATTORNEY CHRISTIE:

13 That's all right.

14 ATTORNEY BAILEY:

15 Okay.

16 ATTORNEY CHRISTIE:

17 I'm finished.

18 BY ATTORNEY BAILEY:

19 Q. Let me go on to another
20 question. When we talked to Captain
21 Brown, I think, he indicated that he
22 spoke with Major Conley at the
23 request of Commissioner Evanko.
24 Something about the investigation
25 ascertaining facts, no personnel

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1 action involved. Do you remember
2 that?

3 A. No, I do not.

4 Q. Well, it says on February 14th
5 of '01 that you forwarded a copy of
6 the worksheet to the commissioner.
7 What's that about? Do you know what
8 that's about, why you requested that?

9 A. What is it again?

10 Q. Well, my understand is that
11 sometime on or about the 14th of
12 February of 2001, I want you to bear
13 in mind that the lawsuit was filed on
14 January 14, '01, I think it was. Why
15 did you request a worksheet from
16 Captain Brown?

17 A. I don't remember that I did
18 request one.

19 Q. Okay. Was this an
20 investigation that went into the
21 events --- was it an investigation
22 into the FBI at all?

23 A. In so much as what they had
24 told Captain Ober.

25 Q. In fact that's why Ober is

1 mentioned, isn't he, during those
2 notes that you took of the discussion
3 with Mr. Mascara?

4 A. I'm not sure I know what you
5 mean.

6 Q. Well, the notes speak for
7 themselves, Captain Ober was
8 discussed. Paragraph 50, page 16,
9 there's a number of allegations in
10 there, but it erroneously indicates
11 that Ober was returned to IAD as
12 Director of Internal Affairs for five
13 days before transferring him to Troop
14 B, Washington. Let me tell you why I
15 am asking this question. You'd
16 indicated it was for a pay period ---
17 at least your recollection is it was
18 a pay period, two weeks?

19 A. I thought that's what it was,
20 yes.

21 Q. Okay. You don't have a
22 recollection of it ever being for a
23 period --- I know it didn't take
24 place, but a recollection of it ever
25 being for five days?

1 A. Other than listening to
2 Lieutenant Colonel Conley during his
3 deposition.

4 Q. Do historical files have
5 references to the research that's
6 done on them, the recommended
7 changes, drafts of changes and that
8 kind of thing in your experience?

9 A. I don't have any experience
10 with historical files at all.

11 Q. Boy, are you lucky. That's
12 very interesting. Have you never in
13 terms of any of the changes to
14 Pennsylvania State Police
15 Regulations, you have never reviewed
16 or looked at a historic file?

17 A. That is correct.

18 Q. In all of the time that you
19 have been with the Pennsylvania State
20 Police where there has been a change
21 in regulations, have you ever looked
22 at what it was like --- you had done
23 a before and after comparison?

24 A. Of the actual regulation?

25 Q. Yes, sir.

1 A. I've probably looked at before
2 and after regulations, what was in
3 existence at a particular time and
4 what a new one would say.

5 Q. But you don't have a
6 particular recollection of when or
7 which one?

8 A. Throughout my career I would
9 have done that.

10 Q. You didn't do it with AR
11 1.102(c), though?

12 A. After the Amended Complaint or
13 after I found out about it through
14 these procedures I looked at it.

15 Q. Okay. And what conclusions
16 did you reach?

17 A. I didn't reach any.

18 Q. First darn time you saw them;
19 isn't it? First time you recollect
20 you seeing those proposed changes or
21 the so-called change that took place;
22 isn't it, Colonel?

23 A. That is correct.

24 Q. On page 18, paragraph 55, the
25 allegation is that a representation

1 that was made to Plaintiff and his
2 Counsel was false. And it says that
3 AR 1-1-02 had just been changed on
4 February 22nd, 2001 and was
5 personally approved by the Defendant
6 Evanko according to file documents.
7 The word personally in there is not
8 correct, that is an error?

9 A. That is incorrect.

10 Q. All right, sir. Let's talk
11 about Field Regulation 1-1.17(b).
12 And we can finish this up I think
13 fairly quickly. I want to read a
14 paragraph to you out of the Amended
15 Complaint appearing on page 19, sir.
16 Reads as follows, additionally FR,
17 Field Regulation, 1-1.17(b) is
18 misrepresented to the court on page
19 12 of the motion to dismiss as quote,
20 requiring members to properly notify
21 their supervisor when they receive
22 any information indicating another
23 member, quote, unquote, might have
24 violated the law. You have a
25 familiarity with the language --- I

1 mean you referred to it here earlier
2 in the deposition a couple of times.
3 Do you remember offhand if --- do you
4 have a commanding knowledge of its
5 verbiage, of the words?

6 A. I think that's an accurate
7 representation of its contents.

8 Q. And the word might is
9 underlined. It says emphasis added.
10 The subject field regulation, this is
11 in the allegation, paragraph 59. It
12 says, the subject field regulation
13 uses the word and phraseology has,
14 which is underlined, violated any
15 law, rule, regulation or order
16 emphasis added. It does not use the
17 word might. Do you agree or
18 disagree, or do you know?

19 A. You lost me on the two
20 different ---.

21 Q. Well, I'll let you read it.
22 Read paragraph 59 until your heart's
23 content. If you know the answer ---
24 and if you don't --- I mean, I
25 realize it's a technical question.

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1 I'm not trying to be unfair, but tell
2 me if you know.

3 A. I thought it says might have
4 violated the law. I thought that's
5 the way the regulation says.

6 ATTORNEY GUIDO:

7 Well, the regulation
8 speaks for itself.

9 ATTORNEY BAILEY:

10 Yes, I mean, it does.
11 It really does. It doesn't
12 matter what any of us
13 attorneys say.

14 BY ATTORNEY BAILEY:

15 Q. But it does matter what you
16 recollect.

17 A. I thought it said might.

18 Q. You thought it said might?

19 A. Yes, I thought it says might.

20 Q. When is the last time you
21 reviewed it?

22 A. Prior to coming up for this
23 deposition.

24 Q. Okay. You don't have a copy
25 handy; do you?

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1 A. No, I don't.

2 Q. See if I could get a copy for
3 just one second, because I may be
4 wrong and I don't want to ---.

5 ATTORNEY BAILEY:

6 Just suspend for one
7 minute.

8 MR. SOLOMON:

9 It's 3:58 p.m., off
10 record.

11 VIDEOGRAPHER:

12 It's 4:00 p.m., we're
13 suspending.

14 SHORT BREAK TAKEN

15 VIDEOGRAPHER:

16 It is now 4:04 p.m.,
17 we're back on the record.

18 BY ATTORNEY BAILEY:

19 Q. Colonel, I'd like to read to
20 you Field Regulation 1-1 ---.

21 BRIEF INTERRUPTION

22 ATTORNEY BAILEY:

23 Strike all of my former
24 comments until the
25 stenographer is ready, please.

1 We're back on the record now.
2 Please, strike anything
3 in between when we resumed on
4 the record because of my error
5 in not waiting until the
6 stenographer was able to mark
7 the document involved here.

8 BY ATTORNEY BAILEY:

9 Q. Sir, can you identify for us
10 --- Colonel Evanko, can you identify
11 for us the document that is in front
12 of you?

13 A. It's a copy of FR 1-1 dated
14 March 25, 1992.

15 Q. And I just want to read into
16 the record very briefly under 1.1
17 Section 1.17, Recording of
18 Information, Subsection B, which is
19 the part of the field regulation
20 referred to in paragraph 59. Then I
21 just want to ask you to comment if
22 you would. It says, members shall
23 promptly report to their supervisor
24 any information which comes to their
25 attention and which tends to indicate

1 that any other member or employee
2 has, I want to emphasize the word
3 has, last word, third line, violated
4 any law, rule, regulation or order.
5 I realize I was asking you earlier to
6 comment from memory, which is awfully
7 difficult. And in light of paragraph
8 59 in that regulation, unless it's
9 been changed, can you tell me if it
10 has?

11 A. I don't know. That would be
12 my first question, what was in effect
13 in September October of 1998.

14 Q. Okay.

15 ATTORNEY GUIDO:

16 Counsel, we'll
17 stipulate that this is the
18 correct version of the
19 regulation, that this is the
20 one that was in effect.
21 However, I would like the
22 question to be clarified when
23 you're referring to paragraph
24 59. I don't have the
25 complaint, Amended Complaint,

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1 in front of me. My
2 recollection is that you're
3 referring --- the reference is
4 to a brief which I wrote in
5 which I paraphrased what the
6 regulation says, which says
7 that any information which
8 tends to indicate that an
9 employee has violated any
10 laws. So I just want to make
11 sure the question is clarified
12 as to what the reference in
13 the Amended Complaint is to.

14 ATTORNEY BAILEY:

15 I'll read paragraph 59
16 into the record then.

17 BY ATTORNEY BAILEY:

18 Q. It says, additionally FR
19 1-1.17(b) is misrepresented to the
20 Court on page 12 of the Motion to
21 Dismiss. Here the acronym MTD is
22 used, as requiring, quote, requiring
23 members to promptly notify their
24 supervisor when they receive any
25 information indicating that another

1 member might, it is in quotes
2 underlined, have violated the law,
3 closed quote. Emphasis added,
4 period. The subject field regulation,
5 the acronym FR is used, uses the
6 words and phraseology quote, has,
7 underlined for emphasis, violated any
8 law, rule, regulation or order,
9 closed quote. Emphasis added,
10 period. It does not use the word
11 might.

12 Sir, the reason I raise this
13 as an issue is that you'd made
14 reference earlier in the deposition
15 to your belief. And I'm not asking
16 you to redact or change your
17 testimony at all, not suggesting you
18 should. But you had made reference
19 to your belief that Colonel Evanko
20 had violated, you thought that he had
21 violated Field Regulation 1-1.17.
22 And that's why I asked you if you
23 knew the wording and that's why I
24 introduced this here to point that,
25 you know, maybe we'll have a

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1 difference of opinion over that. The
2 Court will have to decide it, but you
3 still think that he violated it;
4 right?

5 A. Yes, I do.

6 Q. Okay. That's all ---.

7 ATTORNEY GUIDO:

8 Can we clarify that you
9 accidentally said Colonel
10 Evanko violated it? I
11 believe ---.

12 BY ATTORNEY BAILEY:

13 Q. No, no, I'm sorry. Oh, yes,
14 that can clearly be a major blunder
15 on my part. As Napoleon once said,
16 in war a blunder is worse than a
17 crime. Of course, we're not involved
18 in a war here, so Colonel Evanko it's
19 not an allegation that you've
20 violated this regulation, but you
21 believe that Captain Ober has?

22 A. Yes.

23 Q. Okay. How do you think he
24 violated it? Last question, quite
25 frankly, that's the last question I

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1 have for you. How do you think he
2 violated it?

3 A. I just think the verbiage
4 tends to indicate a member violated
5 it, would be consistent with my
6 recollection of what he told me.

7 Q. Okay. Sir, I can't --- tell
8 you what, give me one minute to
9 double-check with my client and I
10 think I may be done.

11 ATTORNEY BAILEY:

12 Are you going to have
13 any questions, Syndi?

14 ATTORNEY GUIDO:

15 Probably not.

16 ATTORNEY BAILEY:

17 Sir, my client tells me
18 that we're clear to go. I'd
19 like to thank you very much
20 for your cooperation here
21 today. I realize being a
22 witness is uncomfortable and I
23 appreciate your courtesy.
24 Thank you.

25 A. You're welcome.

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ATTORNEY GUIDO:

We don't have any questions. I was just clarifying we don't have any questions.

MR. SOLOMON:

4:08 p.m. The deposition is now concluded.

VIDEOGRAPHER:

It is now 4:10 p.m. and the deposition of Commissioner Evanko is now concluded.

* * * * *

DEPOSITION CONCLUDED AT 4:10 P.M.

* * * * *

1 COMMONWEALTH OF PENNSYLVANIA)

2 COMMISSIONER OF DEEDS)

3 C E R T I F I C A T E

4 I, Jennifer P. Billstein, Commissioner of Deeds
5 for the Commonwealth of Pennsylvania, do hereby
6 certify:

7 That the witness was first duly sworn to testify
8 to the truth, the whole truth, and nothing but the
9 truth; that the foregoing deposition was taken at the
10 time and place stated herein; and that the said
11 deposition was taken stenographically by me and
12 reduced to typewriting, and constitutes a true and
13 correct record of the testimony given by the witness.

14 I further certify that the reading and signing
15 of said depositions were (not) waived by counsel for
16 the respective parties and by the witness.

17 I further certify that I am not a relative,
18 employee or attorney of any of the parties, nor a
19 relative or employee of counsel, and that I am in no
20 way interested directly or indirectly in this action.

21 IN WITNESS WHEREOF, I have hereunto set my hand
22 and stamp this 22 day of April 2002.

23 *Jennifer P. Billstein*
24

25 JENNIFER P. BILLSTEIN
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UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT
OF PENNSYLVANIA

* * * * *

DARRELL G. OBER, *

Plaintiff * Case No.

vs. * 1CV-01-0084

PAUL EVANKO, MARK * (JUDGE CALDWELL)

CAMPBELL, THOMAS *

COURY, JOSEPH *

WESCOTT, and *

HAWTHORNE CONLEY, *

Defendants *

* * * * *

VIDEOTAPED DEPOSITION OF
PAUL EVANKO
March 27, 2002

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<p>1 EXHIBIT PAGE</p> <p>2</p> <p>3</p> <p>4 NUMBER DESCRIPTION IDENTIFIED</p> <p>5 One 10/19/99 Letter to</p> <p>6 Director from</p> <p>7 Captain Ober 29</p> <p>8 Two Commissioner's Notes 116</p> <p>9 Three 11/1/99 Letter 275</p> <p>10 Four 5/25/02 document --</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>Page 6</p> <p>1 PROCEEDINGS</p> <p>2</p> <p>3 VIDEOGRAPHER:</p> <p>4 Mr. Evanko, would you</p> <p>5 please raise your right hand</p> <p>6 and state your name for the</p> <p>7 record?</p> <p>8 MR. EVANKO:</p> <p>9 Paul Evanko.</p> <p>10 PAUL EVANKO, CALLED AND SWORN TO</p> <p>11 TESTIFY</p> <p>12 VIDEOGRAPHER:</p> <p>13 Thank you. Mr. Bailey,</p> <p>14 could we have a sound check</p> <p>15 around the room?</p> <p>16 ATTORNEY BAILEY:</p> <p>17 Yes. My name is Don</p> <p>18 Bailey. I represent Darrell</p> <p>19 G. Ober, who is the Plaintiff</p> <p>20 in this matter. My address is</p> <p>21 4311 North Second --- North</p> <p>22 Sixth Street, Harrisburg,</p> <p>23 Pennsylvania 17110. My phone</p> <p>24 number is (717) 221-9500.</p> <p>25 ATTORNEY GUIDO:</p>
<p>Page 7</p> <p>1 OBJECTION PAGE</p> <p>2</p> <p>3 ATTORNEY. PAGE</p> <p>4 Christie 48, 143</p> <p>5 Guido 106, 239</p> <p>6 Bailey 116</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>Page 9</p> <p>1 Syndi Guido, Governor's</p> <p>2 Office of General Counsel. I</p> <p>3 represent Colonel Evanko and</p> <p>4 the other Defendants.</p> <p>5 ATTORNEY CHRISTIE:</p> <p>6 Barbara Christie, Chief</p> <p>7 Counsel, Pennsylvania State</p> <p>8 Police. My address is 1800</p> <p>9 Elmerton Avenue, Harrisburg,</p> <p>10 PA 17110. Office number is</p> <p>11 (717) 783-5568.</p> <p>12 ATTORNEY REYNOLDS:</p> <p>13 My name is Joanna.</p> <p>14 Reynolds. I'm an Assistant</p> <p>15 Counsel with the state police.</p> <p>16 I represent the Defendants.</p> <p>17 And my address and phone</p> <p>18 number are the same as Ms.</p> <p>19 Christie's.</p> <p>20 ATTORNEY BAILEY:</p> <p>21 I know we have a</p> <p>22 stenographer here. If she</p> <p>23 could identify herself and</p> <p>24 then put a phone number down.</p> <p>25 I want to specify that I am</p>

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1 Q. And whether Evanko and someone
2 in the Governor's Office was a target
3 or actually under suspicion. Well,
4 you were concerned about that? The
5 record's replete with numerous
6 references ---.

7 A. That I was what?

8 Q. Well, here's the allegations.
9 The first was to learn the breadth
10 and depth of Ober's knowledge about
11 the FBI investigation, you've already
12 responded to that. And whether
13 Evanko and someone in the Governor's
14 Office was a target or actually under
15 suspicion, that was not a purpose?

16 A. My concern would have been to
17 try to determine why the FBI or
18 Lieutenant Colonel Hikus didn't tell
19 me. So I guess in a way that would
20 be accurate.

21 Q. Thank you. And the second was
22 to harass and injure Ober as a way to
23 send a signal to others that the
24 Defendants as a leadership cadre
25 require the obedience even the

1 unlawful obedience of PSP members,
2 above all other considerations as an
3 unwritten term and condition of
4 employment. Now, clearly you would
5 not agree with that?

6 A. I would not agree with that
7 and I will go back to the last
8 question. I would agree to that as
9 far as I am concerned but not the
10 Governor's Office.

11 Q. And the last sentence --- I
12 guess that's not real helpful here.
13 Okay. Now, paragraph 39 reads,
14 towards the end after the meeting
15 that you had in your office, the
16 following. That the meeting in your
17 office in which --- well, let's clear
18 that up first. Paragraph 39 says
19 that there was a meeting following
20 Colonel Evanko's meeting with Mark
21 Campbell. We've already indicated it
22 was a phone call and not a meeting;
23 right?

24 A. That's correct.

25 Q. Where Evanko secured

1 permission to investigate the
2 Plaintiff. You already said that did
3 not occur?

4 A. That did not occur.

5 Q. Because Evanko proceed to
6 harass Plaintiff have others such as
7 the Defendants Conley, Coury, and
8 Wescott harass him. Now, clearly you
9 don't agree with that? That is not
10 correct?

11 A. That is not correct.

12 Q. And have him, meaning Ober,
13 officially investigated despite the
14 fact that Evanko was told he should
15 not conduct an investigation. Now,
16 your investigation into Ober ---
17 strike that.

18 Your investigation into the
19 facts and circumstances as you put
20 it, we feel it was into Darrell Ober
21 and respectfully disagree with you on
22 that. But we understand your
23 position and assuming your
24 definition, the investigation into
25 the facts and circumstance of the FBI

1 probe, the allegation here is that
2 you were told that it was not proper,
3 that investigation. There being no
4 cause for such an inquiry as required
5 by PSP policies and rules and by both
6 the Pennsylvania and the United
7 States Constitution. Mr. Coury
8 didn't tell you that?

9 Q. The only thing Colonel Coury
10 told me was that this is not a ---
11 when I said about assigning BPR
12 investigators? This is not a BPR
13 issue, it should be an administrative
14 inquiry.

15 Q. So he was behind the
16 investigation but he said it should
17 be an administrative inquiry?

18 A. It's not a BPR issue and don't
19 assign BPR investigators to it.

20 Q. Why did Captain Brown, in July
21 20th, 1999, put a BPR number on it?
22 Why did he do that? Did you tell him
23 to do that?

24 A. No, I did not tell him.

25 Q. Then why did he do it? Do you

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1 know why he did it? Did you ever ask
2 him?

3 A. No, I never asked him and I
4 don't know why he put a number on it.

5 Q. Sir, when Mr. Williams talked
6 to Mr. Brown, we've got testimony on
7 this, they talked about this issue,
8 the nature of this inquiry. We have
9 a deposition from Mr. Brown. You're
10 welcome to read it. I assume you
11 have, I don't know.

12 A. No, I have not.

13 Q. All right, sir. Was the thing
14 ever a BPR investigation, Colonel?

15 A. No, it was not.

16 Q. It was not?

17 A. It was not.

18 Q. It was not, but Captain Brown
19 gave it a BPR number. Who --- why
20 did he do that? Who authorized him
21 to do that? What was the reason for
22 that; do you know?

23 A. I can speculate as to what it
24 is.

25 Q. Then tell me.

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1 A. As a tracking number.

2 Q. As a tracking number.

3 A. That's the only reason I could
4 possibly think of.

5 Q. It wasn't to cover; was it?

6 A. Pardon me?

7 Q. It was to provide cover; was
8 it?

9 A. I don't know what you mean.

10 Q. Colonel Conley ever talk to
11 you about this thing as a BPR with a
12 BPR number?

13 A. No, sir.

14 Q. Did you ever discuss Captain
15 Ober with Colonel Conley that you can
16 remember?

17 A. I think anything that I
18 discussed about Captain Ober was with
19 Lieutenant Colonel Coury? Although
20 Captain Conley has an STD directed to
21 me that he says he talked to me, but
22 I don't recall any direct
23 conversations.

24 Q. Sir, I'm sorry, what was that
25 again?

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1 A. What's the question again?

2 ATTORNEY CHRISTIE:

3 It can be read back if
4 you want the court reporter
5 --- the answer's on the
6 record.

7 ATTORNEY BAILEY:

8 No, no, let me go on to
9 another question. I'm sorry
10 ma'am. I'm sorry, I
11 interrupted you.

12 ATTORNEY CHRISTIE:

13 That's all right.

14 ATTORNEY BAILEY:

15 Okay.

16 ATTORNEY CHRISTIE:

17 I'm finished.

18 BY ATTORNEY BAILEY:

19 Q. Let me go on to another
20 question. When we talked to Captain
21 Brown, I think, he indicated that he
22 spoke with Major Conley at the
23 request of Commissioner Evanko.
24 Something about the investigation
25 ascertaining facts, no personnel

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1 action involved. Do you remember
2 that?

3 A. No, I do not.

4 Q. Well, it says on February 14th
5 of '01 that you forwarded a copy of
6 the worksheet to the commissioner.
7 What's that about? Do you know what
8 that's about, why you requested that?

9 A. What is it again?

10 Q. Well, my understand is that
11 sometime on or about the 14th of
12 February of 2001, I want you to bear
13 in mind that the lawsuit was filed on
14 January 14, '01, I think it was. Why
15 did you request a worksheet from
16 Captain Brown?

17 A. I don't remember that I did
18 request one.

19 Q. Okay. Was this an
20 investigation that went into the
21 events --- was it an investigation
22 into the FBI at all?

23 A. In so much as what they had
24 told Captain Ober.

25 Q. In fact that's why Ober is

1 mentioned, isn't he, during those
2 notes that you took of the discussion
3 with Mr. Mascara?

4 A. I'm not sure I know what you
5 mean.

6 Q. Well, the notes speak for
7 themselves, Captain Ober was
8 discussed. Paragraph 50, page 16,
9 there's a number of allegations in
10 there, but it erroneously indicates
11 that Ober was returned to IAD as
12 Director of Internal Affairs for five
13 days before transferring him to Troop
14 B, Washington. Let me tell you why I
15 am asking this question. You'd
16 indicated it was for a pay period ---
17 at least your recollection is it was
18 a pay period, two weeks?

19 A. I thought that's what it was,
20 yes.

21 Q. Okay. You don't have a
22 recollection of it ever being for a
23 period --- I know it didn't take
24 place, but a recollection of it ever
25 being for five days?

1 A. Other than listening to
2 Lieutenant Colonel Conley during his
3 deposition.

4 Q. Do historical files have
5 references to the research that's
6 done on them, the recommended
7 changes, drafts of changes and that
8 kind of thing in your experience?

9 A. I don't have any experience
10 with historical files at all.

11 Q. Boy, are you lucky. That's
12 very interesting. Have you never in
13 terms of any of the changes to
14 Pennsylvania State Police
15 Regulations, you have never reviewed
16 or looked at a historic file?

17 A. That is correct.

18 Q. In all of the time that you
19 have been with the Pennsylvania State
20 Police where there has been a change
21 in regulations, have you ever looked
22 at what it was like --- you had done
23 a before and after comparison?

24 A. Of the actual regulation?

25 Q. Yes, sir.

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1 A. I've probably looked at before
2 and after regulations, what was in
3 existence at a particular time and
4 what a new one would say.

5 Q. But you don't have a
6 particular recollection of when or
7 which one?

8 A. Throughout my career I would
9 have done that.

10 Q. You didn't do it with AR
11 1.102(c), though?

12 A. After the Amended Complaint or
13 after I found out about it through
14 these procedures I looked at it.

15 Q. Okay. And what conclusions
16 did you reach?

17 A. I didn't reach any.

18 Q. First darn time you saw them;
19 isn't it? First time you recollect
20 you seeing those proposed changes or
21 the so-called change that took place;
22 isn't it, Colonel?

23 A. That is correct.

24 Q. On page 18, paragraph 55, the
25 allegation is that a representation

1 that was made to Plaintiff and his
2 Counsel was false. And it says that
3 AR 1-1-02 had just been changed on
4 February 22nd, 2001 and was
5 personally approved by the Defendant
6 Evanko according to file documents.
7 The word personally in there is not
8 correct, that is an error?

9 A. That is incorrect.

10 Q. All right, sir. Let's talk
11 about Field Regulation 1-1.17(b).
12 And we can finish this up I think
13 fairly quickly. I want to read a
14 paragraph to you out of the Amended
15 Complaint appearing on page 19, sir.
16 Reads as follows, additionally FR,
17 Field Regulation, 1-1.17(b) is
18 misrepresented to the court on page
19 12 of the motion to dismiss as quote,
20 requiring members to properly notify
21 their supervisor when they receive
22 any information indicating another
23 member, quote, unquote, might have
24 violated the law. You have a
25 familiarity with the language --- I

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1 mean you referred to it here earlier
2 in the deposition a couple of times.
3 Do you remember offhand if --- do you
4 have a commanding knowledge of its
5 verbiage, of the words?

6 A. I think that's an accurate
7 representation of its contents.

8 Q. And the word might is
9 underlined. It says emphasis added.
10 The subject field regulation, this is
11 in the allegation, paragraph 59. It
12 says, the subject field regulation
13 uses the word and phraseology has,
14 which is underlined, violated any
15 law, rule, regulation or order
16 emphasis added. It does not use the
17 word might. Do you agree or
18 disagree, or do you know?

19 A. You lost me on the two
20 different ---.

21 Q. Well, I'll let you read it.
22 Read paragraph 59 until your heart's
23 content. If you know the answer ---
24 and if you don't --- I mean, I
25 realize it's a technical question.

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1 I'm not trying to be unfair, but tell
2 me if you know.

3 A. I thought it says might have
4 violated the law. I thought that's
5 the way the regulation says.

6 ATTORNEY GUIDO:

7 Well, the regulation
8 speaks for itself.

9 ATTORNEY BAILEY:

10 Yes, I mean, it does.
11 It really does. It doesn't
12 matter what any of us
13 attorneys say.

14 BY ATTORNEY BAILEY:

15 Q. But it does matter what you
16 recollect.

17 A. I thought it said might.

18 Q. You thought it said might?

19 A. Yes, I thought it says might.

20 Q. When is the last time you
21 reviewed it?

22 A. Prior to coming up for this
23 deposition.

24 Q. Okay. You don't have a copy
25 handy; do you?

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1 A. No, I don't.

2 Q. See if I could get a copy for
3 just one second, because I may be
4 wrong and I don't want to ---.

5 ATTORNEY BAILEY:

6 Just suspend for one
7 minute.

8 MR. SOLOMON:

9 It's 3:58 p.m., off
10 record.

11 VIDEOGRAPHER:

12 It's 4:00 p.m., we're
13 suspending.

14 SHORT BREAK TAKEN

15 VIDEOGRAPHER:

16 It is now 4:04 p.m.,
17 we're back on the record.

18 BY ATTORNEY BAILEY:

19 Q. Colonel, I'd like to read to
20 you Field Regulation 1-1 ---.

21 BRIEF INTERRUPTION

22 ATTORNEY BAILEY:

23 Strike all of my former
24 comments until the
25 stenographer is ready, please.

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1 We're back on the record now.
2 Please, strike anything
3 in between when we resumed on
4 the record because of my error
5 in not waiting until the
6 stenographer was able to mark
7 the document involved here.

8 BY ATTORNEY BAILEY:

9 Q. Sir, can you identify for us
10 --- Colonel Evanko, can you identify
11 for us the document that is in front
12 of you?

13 A. It's a copy of FR 1-1 dated
14 March 25, 1992.

15 Q. And I just want to read into
16 the record very briefly under 1.1
17 Section 1.17, Recording of
18 Information, Subsection B, which is
19 the part of the field regulation
20 referred to in paragraph 59. Then I
21 just want to ask you to comment if
22 you would. It says, members shall
23 promptly report to their supervisor
24 any information which comes to their
25 attention and which tends to indicate

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1 that any other member or employee
2 has, I want to emphasize the word
3 has, last word, third line, violated
4 any law, rule, regulation or order.
5 I realize I was asking you earlier to
6 comment from memory, which is awfully
7 difficult. And in light of paragraph
8 59 in that regulation, unless it's
9 been changed, can you tell me if it
10 has?

11 A. I don't know. That would be
12 my first question, what was in effect
13 in September October of 1998.

14 Q. Okay.

15 ATTORNEY GUIDO:

16 Counsel, we'll
17 stipulate that this is the
18 correct version of the
19 regulation, that this is the
20 one that was in effect.
21 However, I would like the
22 question to be clarified when
23 you're referring to paragraph
24 59. I don't have the
25 complaint, Amended Complaint,

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1 in front of me. My
2 recollection is that you're
3 referring --- the reference is
4 to a brief which I wrote in
5 which I paraphrased what the
6 regulation says, which says
7 that any information which
8 tends to indicate that an
9 employee has violated any
10 laws. So I just want to make
11 sure the question is clarified
12 as to what the reference in
13 the Amended Complaint is to.

14 ATTORNEY BAILEY:

15 I'll read paragraph 59
16 into the record then.

17 BY ATTORNEY BAILEY:

18 Q. It says, additionally FR
19 1-1.17(b) is misrepresented to the
20 Court on page 12 of the Motion to
21 Dismiss. Here the acronym MTD is
22 used, as requiring, quote, requiring
23 members to promptly notify their
24 supervisor when they receive any
25 information indicating that another

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1 member might, it is in quotes
2 underlined, have violated the law,
3 closed quote. Emphasis added,
4 period. The subject field regulation,
5 the acronym FR is used, uses the
6 words and phraseology quote, has,
7 underlined for emphasis, violated any
8 law, rule, regulation or order,
9 closed quote. Emphasis added,
10 period. It does not use the word
11 might.

12 Sir, the reason I raise this
13 as an issue is that you'd made
14 reference earlier in the deposition
15 to your belief. And I'm not asking
16 you to redact or change your
17 testimony at all, not suggesting you
18 should. But you had made reference
19 to your belief that Colonel Evanko
20 had violated, you thought that he had
21 violated Field Regulation 1-1.17.
22 And that's why I asked you if you
23 knew the wording and that's why I
24 introduced this here to point that,
25 you know, maybe we'll have a

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1 difference of opinion over that. The
2 Court will have to decide it, but you
3 still think that he violated it;
4 right?

5 A. Yes, I do.

6 Q. Okay. That's all ---.

7 ATTORNEY GUIDO:

8 Can we clarify that you
9 accidentally said Colonel
10 Evanko violated it? I
11 believe ---.

12 BY ATTORNEY BAILEY:

13 Q. No, no, I'm sorry. Oh, yes,
14 that can clearly be a major blunder
15 on my part. As Napoleon once said,
16 in war a blunder is worse than a
17 crime. Of course, we're not involved
18 in a war here, so Colonel Evanko it's
19 not an allegation that you've
20 violated this regulation, but you
21 believe that Captain Ober has?

22 A. Yes.

23 Q. Okay. How do you think he
24 violated it? Last question, quite
25 frankly, that's the last question I

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1 have for you. How do you think he
2 violated it?

3 A. I just think the verbiage
4 tends to indicate a member violated
5 it, would be consistent with my
6 recollection of what he told me.

7 Q. Okay. Sir, I can't --- tell
8 you what, give me one minute to
9 double-check with my client and I
10 think I may be done.

11 ATTORNEY BAILEY:

12 Are you going to have
13 any questions, Syndi?

14 ATTORNEY GUIDO:

15 Probably not.

16 ATTORNEY BAILEY:

17 Sir, my client tells me
18 that we're clear to go. I'd
19 like to thank you very much
20 for your cooperation here
21 today. I realize being a
22 witness is uncomfortable and I
23 appreciate your courtesy.
24 Thank you.

25 A. You're welcome.

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1 ATTORNEY GUIDO:

2 We don't have any
3 questions. I was just
4 clarifying we don't have any
5 questions.

6 MR. SOLOMON:

7 4:08 p.m. The
8 deposition is now concluded.

9 VIDEOGRAPHER:

10 It is now 4:10 p.m. and
11 the deposition of Commissioner
12 Evanko is now concluded.

13 * * * * *

14 DEPOSITION CONCLUDED AT 4:10 P.M.

15 * * * * *

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1 COMMONWEALTH OF PENNSYLVANIA)

2 COMMISSIONER OF DEEDS)

3 C E R T I F I C A T E

4 I, Jennifer P. Billstein, Commissioner of Deeds
5 for the Commonwealth of Pennsylvania, do hereby
6 certify:

7 That the witness was first duly sworn to testify
8 to the truth, the whole truth, and nothing but the
9 truth; that the foregoing deposition was taken at the
10 time and place stated herein; and that the said
11 deposition was taken stenographically by me and
12 reduced to typewriting, and constitutes a true and
13 correct record of the testimony given by the witness.

14 I further certify that the reading and signing
15 of said depositions were (not) waived by counsel for
16 the respective parties and by the witness.

17 I further certify that I am not a relative,
18 employee or attorney of any of the parties, nor a
19 relative or employee of counsel, and that I am in no
20 way interested directly or indirectly in this action.

21 IN WITNESS WHEREOF, I have hereunto set my hand
22 and stamp this 22 day of April 2002.

23
24 *Jennifer P. Billstein*

25
JENNIFER P. BILLSTEIN
Commissioner Of Deeds
Commonwealth of Pennsylvania
My Commission Expires Jan. 4, 2006

PHILADELPHIA, PA
WILKES-BARRE, PA
OIL CITY, PA
SOMERSET, PA
CLEARFIELD, PA
CHARLESTON, WV

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT
OF PENNSYLVANIA

* * * * *

DARRELL G. OBER, *

Plaintiff * Case No.

vs. * 1CV-01-0084

PAUL EVANKO, MARK * (JUDGE CALDWELL)

CAMPBELL, THOMAS *

COURY, JOSEPH *

WESCOTT, and *

HAWTHORNE CONLEY, *

Defendants *

* * * * *

VIDEOTAPED DEPOSITION OF
PAUL EVANKO
March 27, 2002

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